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LANDS OF THE CHOCTAW AND
CHICKASAW

US 10306.5

Cover

STATEMENT

ACCOMPANYING THE

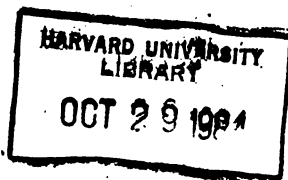
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US 1030

Memorial of the Chickasaws

RELATING TO

LANDS OF THE CHOCTAW AND CHICKASAW
NATIONS WEST OF THE NINETY-EIGHTH
MERIDIAN OF WEST LONGITUDE.



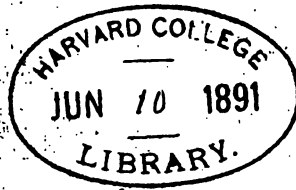
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STATEMENT

ACCOMPANYING THE

Memorial of the Chickasaws.

By the treaty of June 22, 1855, the Choctaws relinquished to the United States all their title to the lands west of the 100th meridian of west longitude, and the Choctaws and Chickasaws leased to the United States, for certain specified uses, their lands west of the 98th meridian. The aggregate consideration for the relinquishment and lease was fixed by the treaty at \$800,000. There was no apportionment of this consideration as between the relinquishment of the lands west of the 100th meridian, and the lease of the lands west of the 98th meridian. The following are the provisions of the treaty relating to this subject:

Article 9. The Choctaw Indians do hereby absolutely and forever quit-claim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the one hundredth degree of west longitude, and the Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude for the permanent settlement of the Wichita and such other tribes or bands of Indians as the government may desire to locate therein, excluding however, all the Indians of New Mexico, and also those whose usual ranges at present are north of the Arkansas river and whose permanent locations are north of the Canadian river; but including those bands whose permanent ranges are south of the Canadian or between it and the Arkansas, which Indians shall be subject to the exclusive control of the United States, under such rules and regulations, not inconsistent with the rights and interests of the Choctaws and Chickasaws, as may from time to time be prescribed by the president for their government: *Provided, however,* That the territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore. 11 Stat. 613.

Article 10. In consideration of the foregoing relinquishment and lease, and as soon as practicable after the ratification of this convention, the United States will pay to the Choctaws the sum of six hundred thousand dollars, and to the Chickasaws the sum of two hundred thousand dollars, in such manner as their general councils shall respectively direct. 11 Stat. 613.

Now, what was the interest in lands west of the 100th meridian which the Choctaws by this treaty relinquished to the United States? The following are the stipulations of the treaty of October 18, 1820:

Art. 1. To enable the president of the United States to carry into effect the above grand and humane objects, the Mingoes, head men and warriors of the Choctaw nation, in full council assembled, in behalf of themselves and the said nation, do, by these presents, cede to the United States of America, all the land lying and being within the boundaries following, to wit: Beginning on the Choctaw boundary, east of Pearl river, at a point due south of the White Oak Spring, on the old Indian path; thence north to said spring; thence northwardly to a black oak standing on the Natchez road, about forty poles eastwardly from Doake's fence, marked A. J. and blazed, with two large pines and a black oak standing near thereto and marked as pointers; thence a straight line to the head of Black Creek or Bouge Loosa; thence down Black Creek or Bouge Loosa to a small lake; thence a direct course so as to strike the Mississippi one mile below the mouth of the Arkansas river; thence down the Mississippi to our boundary; thence around and along the same to the beginning. 7 Stat. 211.

Art. 2. For and in consideration of the foregoing cession on the part of the Choctaw nation and in part satisfaction for the same, the commissioners of the United States in behalf of said states, do hereby cede to said nation a tract of country west of the Mississippi river situate between the Arkansas and Red river and bounded as follows: Beginning on the Arkansas river where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork and up the same to its source; thence due south to the Red river; thence down Red river three miles below the mouth of Little river, which empties itself into Red river on the north side; thence a direct line to the beginning. 7 Stat. 211

Here was an exchange of lands between the United States and the Choctaw nation. The Choctaws ceded to the United States certain lands described by metes and bounds east of the Mississippi river, and the United States ceded to the Choctaws certain lands described by metes and bounds west of the Mississippi. The consideration for which the Choctaws ceded to the United States their lands east of the Mississippi *was not a part of the land* included within the metes and bounds of the western country ceded to them by the United States, *but was the whole of the land* included within those metes and bounds. If it had happened that a part of the land covered by this deed of the United States to the Choctaws was not in fact and in law owned by the United States on the 18th day of October, 1820, when the treaty was signed, the obligation of the United States would have been identical with the obligation incurred by an individual who, being a party to an exchange of farms,

should prove not to be the owner of all the land covered by his deed. It would have become the duty of the United States to do one of three things: either to acquire a complete title to the land covered by their deed and to convey the same to the Choctaws; or to restore to the Choctaws a part of their land east of the Mississippi river; or, finally, to make just reimbursement in money for the land purchased and paid for by the Choctaws, but not delivered by the United States.

If it had been true that on the 18th day of October, 1820, the date of the exchange of lands between the United States and the Choctaw nation, the United States had owned no lands between the Red and Canadian rivers west of the 100th degree of west longitude, then unless the United States had subsequently acquired and conveyed such lands, or restored to the Choctaws a part of their lands east of the Mississippi river, the United States would have become bound to make just compensation to the Choctaws in money for the lands deeded but not delivered to them. So it would have come to pass that when the Choctaws, on the 22d day of June, 1855, relinquished their interest in the lands west of the 100th meridian, the interest so relinquished, as between the Choctaws and the United States, would have been precisely as valuable if the United States had not owned those lands on the 18th of October, 1820, as it would have been if the United States had owned the lands on that day. In one case it would have been the land itself which the Choctaws relinquished on the 22d of June, 1855; in the other case it would have been the just value of the land which the Choctaws relinquished.

But while the reimbursement, to which the Choctaws would have been entitled for the relinquishment of their interest in these lands west of the 100th meridian of longitude in 1855, would have been the same whether the lands did or did not belong to the United States on the 18th of October, 1820, when the exchange was made, the fact is that on that day these lands did belong to the United States, as your memorialists will now show.



1. A letter of instructions from James Madison, secretary of state, to Robert R. Livingston, minister to France, written within nine months after the cession of Louisiana to the United States, contains the following paragraphs:

DEPARTMENT OF STATE, *January 31, 1804.*

SIR: The two last letters received from you bear date on the and 30th September; so that we have been now four months without hearing from you. The last from me to you was dated on the 16th day of January, giving you information of the transfer of Louisiana on the 20th of December, by the French commissioner, M. Loussat, to Governor Clayborn and Gen. Wilkinson, the commissioners appointed on the part of the United States to receive it. * * With respect to the western extent of Louisiana, M. Loussat held a language more satisfactory. *He considered the Rio Bravo or Del Norte, as far as the 30th degree of north latitude, as its true boundary on that side.* The northern boundary, we have reason to believe, was settled between France and Great Britain by commissioners appointed under the treaty of Utrecht, who separated the British and French territories west of the Lake of the Woods by the 49th degree of latitude. Am. St. Papers, vol. 2, p. 574.

This statement is repeated on page 575, in a subsequent letter from Mr. Madison to Mr. Livingston, dated March 31, 1804. M. Loussat was the commissioner who received the transfer of the territory of Louisiana from Spain to France in 1800, and transferred it to the United States under the treaty of 1803.

2. James Madison, secretary of state, in his letter of instructions of April 15, 1804, to James Monroe and Charles Pinckney, ministers extraordinary to the court of Spain, says:

No final cession is to be made to Spain of any part of the territory on this side of the Rio Bravo, but in the event of a cession to the United States of the territory east of the Perdido; and, in that event, in case of absolute necessity only, and to an extent that will not deprive the United States of any of the waters running into the Missouri or the Mississippi, or of the other waters emptying into the gulf of Mexico, between the Mississippi and the river Colorado emptying into the bay of St. Bernard. Am. St. Papers, vol. 2, p. 630.

The bay of St. Bernard is now known as Matagorda bay.

In a subsequent letter to the same ministers, dated July 8, 1804, and printed on the same page, Secretary Madison said:

It is to be understood that a perpetual relinquishment of the territory *between the Rio Bravo and Colorado* is not to be made, nor the sum of dollars paid, without the entire cession of the Floridas, nor any money paid in consideration of the acknowledgment by Spain of our title to the territory between the Iberville and the Perdido.

3. In a letter from Mr. Monroe, minister extraordinary to Spain, to M. Talleyrand, a minister of the French empire, dated Paris, November 8, 1804, he says:

Your excellency will receive within a paper containing an examination of the boundaries of Louisiana which, it is presumed, proves incontestably the doctrine above advanced, as also that the river Perdido is the ancient, and, of course, present, boundary of that province to the east, and *the Rio Bravo to the west*. Am. St. Papers, vol. 2, p. 634.

4. In a letter from the American ministers Monroe and Pinckney to the Spanish minister Cevallos, dated January 28, 1805, they say :

By the cession of Louisiana by his majesty, the emperor of France, to the United States, it becomes necessary to settle its boundaries with the territories of his catholic majesty in that quarter. It is presumed that this subject is capable of such clear and satisfactory illustration as to leave no cause for any difference of opinion between the parties. By the treaty of April 30, 1803, between the United States and France, the latter ceded to the former the said province in full sovereignty, in the same extent and with all the rights which belonged to it under the treaty of October, 1800, by which she had acquired it of Spain. That the nature and extent of the acquisition might be precisely known, the article of the treaty of St. Ildefonso, making the cession, is inserted in that of Paris. To a fair and just construction, therefore, of that article, the United States are referred for the extent of their rights under the treaty of 1803. There is nothing to oppugn its force or detract from the import of its very clear and explicit terms. We have the honor to present to your excellency a paper on this subject which we presume proves in the most satisfactory manner that the boundaries of that province as established by the treaties referred to, are the river Perdido to the east and *the Rio Bravo to the west*. The facts and principles which justify this conclusion are so satisfactory to our government as to convince it that the United States have not a better right to the island of New Orleans, under the cession referred to, than they have to the whole district of territory which is above described. Am. St. Papers, vol. 2, p. 637.

In their letter of April 20, 1805, to the Spanish minister, Messrs. Monroe and Pinckney say :

By the memorial which we had the honor to present to your excellency on the 28th of January last, the epoch of the discovery of the Mississippi and of the waters which empty into it and of the bay of St. Bernard, and of the taking possession of same and of the country dependent thereon, is proved by documents which cannot be questioned. By these it is established, in respect to the Mississippi, its waters, and dependent country, as low down the river as the Arkansas by Messieurs Joliet and Marquette from Canada as early as the year 1673, and to its mouth by the Father Henison in 1680, and by De La Salle and Joutel, who descended the river with 60 men to the ocean and named the country Louisiana, in 1682; and in respect to the bay of St. Bernard in 1685. This was done, at those periods, in the name and under the authority of France, by acts which proclaimed her sovereignty over the whole country to other powers in a manner the most public and solemn, such as making settlements and building forts within it. Of these it is material to notice in the present inquiry, two only, which were erected in the bay of St. Bernard, on the western side of the river Colorado, by M. De la Salle, who landed there from France with 240 persons in 1685. It was on the authority of the discovery thus made and of the possession so taken that Louis XIV granted to Anthony Crozat, by letters patent bearing date in 1712, the exclusive commerce of that country, in which he defines its bound-

ary by declaring that it comprehended all the lands, coasts, and islands which are situated in the Gulf of Mexico between Carolina on the east and old and new Mexico on the west, with all the streams which empty into the ocean within those limits, and the interior of the country dependent on the same. Such are the facts on which the claim of France rested; such are those on which that of the United States now rests.

The principles which are applicable to the case are such as are dictated by reason and have been adopted, in practice, by European powers, in the discoveries and acquisitions which they respectively made in the new world; they are principles intelligible and at the same time founded in strict justice. The first of these is, that when any European nation takes possession of any extensive seacoast, that possession is understood as extending into the interior of the country to the sources of the rivers emptying within that coast, to all their branches and the country they cover, and to give it a right in exclusion of all other nations to the same. * * * The second is, that whenever one European nation makes a discovery and takes possession of any portion of that continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned, the middle distance becomes such of course. The justice and propriety of this rule is too obvious to require illustration. A third rule is, that whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other power, by virtue of purchases made, by grants or conquests of the natives, within the limits thereof. It is believed that this principle has been admitted and acted on invariably since the discovery of America, in respect to their possessions there, by all the European powers. * * *

The above are the principles which we presume are to govern the present case. We will now proceed to apply these principles to the claim of the United States as founded on the facts above stated relative to the discovery and possession of Louisiana by France, and to designate the limit to which we presume they are justly entitled, by virtue thereof, in the quarter referred to. On the authority of the principle first above stated, it is evident that, by the discovery and possession of the Mississippi, in its whole length, and the coast adjoining it, the United States are entitled to the whole country dependent on that river, its several branches, and the waters which empty into it within the limits of that coast. The extent to which this would go it is not in our power to say; but the principle being clear, dependent on plain and simple facts, it would be easy to ascertain it.

It is equally evident by the application of the second principle to the discovery made by M. De la Salle of the bay of St. Bernard, and his establishment there on the western side of the river Colorado, that the United States have a just right to a boundary founded on the middle distance between that point and the then nearest Spanish settlement, which, it is understood, was in the province of Panuco, unless that claim should be precluded on the principle first above mentioned. To what point that would carry us, it is equally out of our power to say; nor is it material, as the possession in the bay of St. Bernard, taken in connection with that of the Mississippi, *has been always understood as a right to extend to the Rio Bravo, on which we now insist.*

In support of this boundary we rely much on the grant of Louis XIV to Anthony Crozat in 1712. That grant, it is true, establishes no new right to the territory. The right had already accrued by the causes, and to the extent contended for, which was never abandoned afterwards, except by the treaty of 1763, which does not affect the present question. This boundary is also supported by the opinions of the best informed persons who have written on the subject with which we have become acquainted. By an extract from a work on Louisiana, written by the Colonel Chevalier de Champigny in 1773, who, being of the country, was doubtless well informed, *the*

Rio Bravo is laid down as the western boundary of that province. This fact is again asserted, with more minuteness, in his second note to that work, in which he states that *Louisiana was bounded before the treaty of 1763 to the west by the mountains of New Mexico, and the Rio Bravo.* In a book containing several memoirs on different subjects, published about three years since at Paris, is one entitled "A Memoir, Historical and Political, on Louisiana," by the Count de Vergennes, Minister of Louis XVI, in which it is stated that *Louisiana is bounded to the east by Florida and to the west by Mexico.* The opinion of geographers in general confirms that of other writers. By a chart of Louisiana, published in 1762 by Don Thomas Lopez, geographer to his catholic majesty, it appears that he considers the *Rio Bravo as the boundary of the province*, as it does by that of De Lisle of the royal academy of science at Paris, which was revised and republished in 1782. Others might be quoted but it is useless to multiply them. Am. St. Papers, vol. 2, pp. 663, 664.

5. Mr. John Quincy Adams, secretary of state, in his letter of March 12, 1818, to Mr. De Onis, the Spanish minister at Washington, says :

"The claim of France always did extend westward to the Rio Bravo, and the only boundaries ever acknowledged by her before the cession to Spain of November 3, 1762, were those marked out in the grant from Louis XIV to Crozat. She always claimed the territory which you call Texas, as being within the limits and forming a part of Louisiana, which in that grant is declared to be bounded westward by New Mexico, eastward by Carolina, and extending inward to the Illinois and to the sources of the Mississippi and of its principal branches. Mr. Cevallos says that these claims of France were never admitted nor recognized by Spain. Be it so. Neither were the claims of Spain ever acknowledged or admitted by France. The boundary was disputed and never settled; it still remains to be settled; and here is a simple statement of the grounds alleged by each of the parties in support of their claims :

ON THE PART OF THE UNITED STATES.

1. The discovery of the Mississippi, from near its source to the ocean, by the French from Canada, in 1683.
2. The possession taken, and establishment made, by La Salle, at the bay of St. Bernard, west of the rivers Trinity and Colorado, by authority from Louis XIV, in 1685.
3. The charter of Louis XIV to Crozat, in 1712.
4. The historical authority of Du Pratz and Champigny, and of the Count De Vergennes.
5. The geographical authority of De Lisle's map, and especially that of the map of Don Thomas Lopez, geographer to the king of Spain, published in 1762. These documents were all referred to in the letter from Messrs. Pinckney and Monroe to Mr. Cevallos, of 20 April, 1805, since which time, and in further confirmation of the same claims, the government of the United States are enabled to refer you to the following.
6. A map published by Homann, at Nuremburg, in 1712.
7. A geographical work published in 1717, at London, entitled "Atlas Geographicus, or a Complete System of Geography, Ancient and Modern;" in which the map of Louisiana marks its extent from the Rio Bravo to the Perdido. In both these maps the fort built by La Salle is laid down on the spot now called Matagorda.
8. An official British map published in 1755 by Bowen, intended to point out the boundaries of the British, Spanish, and French colonies in North America.

9. The narrative published at Paris, of Hennepin in 1683, of Tonti in 1697, and of Joutel in 1713.

10. The letter from Colonel La Harpe to Don Martin D'Alarconne of 8th July, 1719 (A 1, B 2).

11. The order from the French governor of Louisiana, De Bienville, to La Harpe of August 10, 1721 (C 3).

12. The geographical work of Don Antonio de Alcedo, a Spanish geographer of the highest eminence: this work and the map of Lopez, having been published after the cession of Louisiana to Spain in 1762, afford decisive evidence of what Spain herself considered as the western boundary of Louisiana when she had no interest in contesting it against another state (B 4.)

ON THE PART OF SPAIN.

1. The voyages of Ponce de Leon, Vasquez de Ayllon, Panfilo de Narvaez, Fernando de Soto, Luis Moscoso, and other Spanish travellers in the 16th century, who never made any settlement upon any of the territories in question, but who travelled, as you observe, into countries too tedious to enumerate.

2. The establishment of the new kingdoms of Leon and Santander in 1595, and the province of Coahuila in 1600.

3. The province of Texas founded in 1690.

Here, you will please to observe, begins the conflict with the claims of France to the western boundary of Louisiana transferred by the cession of the province to the United States. The presidios or settlements of Las Texas were, by your own statement, adverse settlements to that of La Salle who, six years before, had taken formal possession of the country in the name of and by authority of a charter from Louis XIV. They were preceded by an expedition from Mexico the year before, that is, 1689, to hunt out the French remaining of the settlement of La Salle. Now what right had the viceroy of Mexico to hunt out the French who had formed a settlement under the sanction of their sovereign's authority? You will tell me that from the time when Santa Fé, the capital of New Mexico, was built, Spain considered all the territory east and north of that province, as far as the Mississippi and the Missouri, as her property; that the whole circumference of the gulf of Mexico was hers; and that Philip II had issued a royal order to exterminate every foreigner who should dare to penetrate to it; so that the whole question of right between the United States and Spain, with regard to this boundary, centres in this: the naked pretension of Spain to the whole circumference of the gulf of Mexico, with the exterminating order of Philip II on one side; and the actual occupancy of France, by a solemn charter from Louis XIV, on the other. Well might Messrs. Pinckney and Monroe write to Mr. Cevallos, in 1805, that the *claim of the United States to the boundary of the Rio Bravo was as clear as their right to the island of New Orleans*. * * *

From this work of Joutel it likewise appears that the fort and colony left, by La Salle, at the westward of the Colorado, was destroyed, not as you state by the Indians, but by the Spaniards from Mexico, who, until that time, had never had any settlement of any kind nearer than Panuco, and who, by your own account, had no other right or authority for this act than the royal order of Philip II to exterminate all foreigners penetrating into the gulf of Mexico.

The settlement of La Salle, therefore, at the head of the bay of St. Bernard, westward of the river, which he called Riviere aux Boeufs, but which you call Colorado of Texas, was not, as you have represented it, the unauthorized incursion of a private adventurer into the territories of Spain, but an establishment having every character that could sanction the formation of any European colony upon this continent, and the viceroy of Mexico had no more right to destroy it by a military force than the present viceroy would have to send an army and destroy the city of New Orleans. It was a part of Lou-

isiana discovered by La Salle under formal and express authority from the king of France; and the royal exterminating order of Philip II, was but one of the multitude of sanguinary acts which signalized the reign and name of that monarch, while the name of La Salle is entitled to stand high in the glorious role of the benefactors of mankind. After this statement, founded upon the most authentic documents, the foundation of the presidio of Texas, in 1693, was, by your own showing, an unlawful encroachment upon the territories of France, which, by the first of the three principles laid down by Messrs. Pinckney and Monroe at Aranjuez and above referred to, *extended, on the coast of the gulf of Mexico, half way to the nearest Spanish settlement of Panuco, namely, to the Rio Bravo.* Am. St. Papers, vol. 4, pp. 471, 473.

Mr. Adams also cites the following correspondence between the French and Spanish officers commanding on the western frontier of Louisiana in the years 1719 and 1721:

A 1.

Don Martin D'Alarconne, to M. de la Harpe.

TRINITY RIVER, May 20, 1719.

MONSIEUR: I am very sensible of the politeness that M. de Bienville and yourself have had the goodness to show to me. The orders I have received from the king, my master, are to maintain a good understanding with the French in Louisiana; my own inclinations lead me equally to afford them all the services that depend upon me. But I am compelled to say that your arrival at the Nassonite village surprises me very much. Your governor could not be ignorant that the post you occupy belongs to my government, and that all the lands west of the Nassonites depend upon New Mexico. I counsel you to give advice of this to M. de Bienville, or you will force me to oblige you to abandon lands that the French have no right to occupy.

I have the honor to be, sir,

D'ALARCONNE.

B 2.

Monsieur de la Harpe to Don Martin D'Alarconne.

NASSONITE, July 8, 1719.

MONSIEUR: The order from his Catholic Majesty to obtain a good understanding with the French of Louisiana and the kind intentions you have yourself expressed towards them accord but little with your proceedings. Permit me to inform you that M. de Bienville is perfectly informed of the limits of his government, and is very certain that the post of Nassonite depends not upon the dominions of his Catholic Majesty. He knows also that the province of Las Texas, of which you say you are governor, is a part of Louisiana. M. de La Salle took possession in 1685, in the name of his most Christian Majesty; and since the above epoch possession has been renewed from time to time.

Respecting the post of Nassonite, I cannot comprehend by what right you pretend that it forms a part of New Mexico. I beg leave to represent to you that Don Antoine du Miroir, who discovered New Mexico in 1683, never penetrated east of that province or the Rio Bravo. It was the French who first made alliances with the savage tribes in this region, and it is natural to conclude that a river that flows into the Mississippi and the lands it waters, belong to the king, my master.

If you will do me the pleasure to come into this quarter, I will convince you I hold a post I know how to defend.

I have the honor to be, sir,

DE LA HARPE.

On the 10th of August, 1721, M. de la Harpe received the following order: 'We John Baptiste de Bienville, Chevalier of the Military Order of St. Louis, and commandant general for the king, in the province of Louisiana: It is hereby decreed that M. de la Harpe, commandant of the bay of St. Bernard, shall embark in the packet of the Subtile, commanded by Beranger, with a detachment of 20 soldiers, under M. de la Beñile, and shall proceed forthwith to the bay of St. Bernard belonging to this province, and take possession in the name of the king; and the west company shall plant the arms of the king in the ground, and build a fort upon whatever spot appears most advantageous for the defence of the place. If the Spaniards or any other nation have taken possession, M. de la Harpe will signify to them that they have no right to the country, it being well known that possession was taken in 1685 by De la Salle in the name of the king of France, &c.

BIENVILLE.'

Am. St. Papers, vol. 4, pp. 478, 479.

6. On the 3d day of April, 1820, Henry Clay of Kentucky, in a speech in the house of representatives of the United States, said:

The second resolution comprehended three propositions, the first of which was, that the equivalent granted by Spain to the United States for the province of Texas was inadequate. To determine this, it was necessary to estimate the value of what we gave and of what we received. This involved an inquiry into our claim to Texas. It was not his purpose to enter at large into this subject. *He presumed the spectacle would not be presented of questioning, in this branch of the government, our title to Texas, which had been constantly maintained by the executive for more than 15 years past, under three several administrations. He was at the same time ready and prepared to make out our title, if any one in this house were fearless enough to controvert it.* He would for the present briefly state that the man who is most familiar with the transactions of this government, who so largely participated in the formation of the constitution and in all that has been done under it, who, besides the eminent services that he has rendered his country, principally contributed to the acquisition of Louisiana, and who must be supposed from his various opportunities best to know its limits, declared 15 years ago that *our title to the Rio del Norte was as well founded as it was to the island of New Orleans.* (Here Mr. C. read an extract from the memoir presented in 1805 by Mr. Monroe and Mr. Pinckney to Mr. Cevallos, proving that the *boundary of Louisiana extended eastward to the Perdido, and westward to the Rio del Norte*, in which they say: 'The facts and principles, which justify this conclusion, are so satisfactory to their government as to convince it that the United States have not a better right to the island of New Orleans, under the cession referred to, than they have to the whole district of territory thus described.') * * *

So west of the Mississippi La Salle, acting under France in 1682 or 1683, first discovered that river. In 1685 he made an establishment on the bay of St. Bernard west of the Colorado emptying into it. The nearest Spanish settlement was Panuco, and the *Rio Del Norte, about the mid-way line, became the common boundary.* Ann. Cong., 16 Cong., 1st Sess., vol. 2, pp. 1726 and 1727.

7. That the land which is included between the 100th and 103d meridians of west longitude, and the Red and Canadian

rivers was a part of Louisiana, is shown by 16 European maps published during the 18th century, and now subject to inspection in the congressional library.

(1) A map published at Paris, in 1703, by De Lisle, geographer of the royal academy, to be found in Vol. 1, No. 8, Old Maps of America.

(2) A map published at Leyden, in 1704, by Louis de Hennepin, to be found in West Indise Voyagen, page 1.

(3) A map of H. Moll, published at London, in 1711.

(4) A map of H. Moll, published in London, in 1715, dedicated to Lord Sommers, to be found in Old Maps of America, Vol. 1, No. 16.

(5) A map by H. Moll, published in London, in 1715, to be found in Old Maps of America, Vol. 1, No. 13.

(6) A map published by Covens and Mortier, at Amsterdam, in 1718, to be found in Atlas Nouveau, Vol. 2, No. 38.

(7) A map printed in London, in 1722, dedicated to William, Duke of Gloucester.

(8) A map by De Lisle, published at Amsterdam, in 1722, to be found in Atlas Nouveau, Vol. 2, No. 39.

(9) A map published at Amsterdam, without date, but before 1730.

(10) A map by H. Popple, published at London, in 1733, under the patronage of the lords commissioners of trades and plantations, to be found in Old Maps of America, Vol. 1, No. 17.

(11) A map by H. Popple, published in London, in 1735, to be found in American Maps, Vol. 2, No. 9.

(12) A map by De Lisle, published at Amsterdam, in 1739.

(13) A map by A. G. Boehme, published in 1746.

(14) A map published in 1753, to be found in American Maps, Vol. 2, No. 10.

(15) A map published in 1774, at London, in pursuance of an act of parliament.

(16) A map published by authority of parliament, at London, in 1775, copied from von Staehlin's, published at St. Petersburg, in 1774.

8. That the land, which is included between the 100th and 103d meridians of west longitude and the Red and Canadian rivers was a part of Louisiana, is shown by a map published, at Paris, in 1820, by Barbé-Marbois, the French negotiator of the treaty of cession of 1803, in his history of Louisiana, to be found in the congressional library.

Now it happened that there was an inconsistency between the *natural objects* and one of the *courses* specified in the conveyance made by the United States to the Choctaws in the treaty of October 18, 1820. It is a fact that a line drawn *due south* from the *source of the Canadian* will not touch the *Red river*, because the source of the Red river is further westward than the source of the Canadian.

But Mr. Justice Story, delivering the opinion of the Supreme Court of the United States in Preston's Heirs v. Bowman (6 Wheat., 580), laid it down as "a universal rule that course and distance yield to natural and ascertained objects." And in Newsom v. Prior (7 Wheat., 7), Chief-Justice Marshall said :

The courts of Tennessee, and all other courts by whom cases of this description have been decided, have adopted the same principle and adhered to it. It is that the most material and most certain calls shall control those which are less material and less certain. A call for a natural object, as a river, or a known stream, a spring, or even a marked tree, shall control both course and distance.

It is unnecessary to cite the numerous, not to say innumerable authorities, by which this principle has been recognized and approved.

Applying these indisputable rules of law to the case under consideration, we find that two of the calls of this conveyance to the Choctaw nation are for *natural objects*, namely ; first, the *source* of the Canadian river ; and, second, the *Red river* ; that a third call is for a *course* connecting the Red river with the source of the Canadian ; that this course, being due south from the source of the Canadian, is inconsistent with the other two calls, because the source of the Canadian is further west than that of the Red river ; and that this third call is therefore controlled by the other two calls of the description. The result is that the Red river and the source of the Canadian are

to be connected by a straight line drawn from the source of the Canadian to the nearest point of the Red river, which nearest point happens to be the source of the Red river.

But on the map accompanying the report of the Commissioner of Indian Affairs for 1888, the source of the Canadian river is located in 104° 30' west longitude, and 37° north latitude, and the source of the Red river in 103° 30' west longitude, and 34° 45' north latitude. A line drawn from the source of the Canadian to the source of the Red river lies wholly west of 103° 30', and may therefore lie within territory which belonged to Spain in 1820. But it is certain that the cession to the Choctaws carried all the land between the 100th and 103d meridians and the Red and Canadian rivers. The map number 18 hereto appended, accurately traced from the map published in the report of the Commissioner of Indian Affairs for 1888, shows the dimensions of the land of the Choctaws west of the 100th meridian. It contained 10,296 square miles, and 6,589,440 acres.

Your memorialists therefore assume that when the Choctaws relinquished their interest in the lands between the Red and Canadian rivers, west of the 100th meridian of west longitude, on the 22nd day of June, 1855, they were entitled to receive, in compensation for that relinquishment, the just value of those lands. What then was the just value of those lands in 1855? The territory of the Choctaws west of the 100th meridian of west longitude contained 286 full townships, excluding fractional townships, amounting to 10,296 square miles or 6,589,440 acres of land. At the inadequate, not to say insignificant, price of 12½ cents per acre this land amounted in value to \$823,680. But in the treaty of June 22, 1855, the sum of \$800,000 was constituted the entire pecuniary consideration, not only for the relinquishment by the Choctaws of their interests west of the 100th meridian, but also for the lease by the Choctaws and Chickasaws to the United States of the land between the 98th and 100th meridians. The sum of \$800,000 was insufficient to compensate the Choctaws for the relinquishment of the land

west of the 100th meridian. Nothing remained, therefore, to apply on the lease of the land between the 98th and 100th meridians, which amounted to 7,713,239 acres. The rent of the 7,713,239 acres of land between those meridians, was altogether nominal; it did not exceed one dollar. For less than one dollar then, the United States have held 7,713,239 acres of land from June, 1855, down to March, 1890, a period of more than 34 years. Now what considerations could possibly have reconciled the Choctaws and Chickasaws to a lease, covering 7,713,239 acres of land, for a period of 34 years, at an aggregate rental of less than one dollar? There were two considerations which reconciled the Choctaws and Chickasaws to this lease. These considerations were the uses to which the lands were devoted. In the first place, by the express terms of the lease, the lands were to be used for a permanent settlement of the Wichitas, and other bands or tribes of Indians; in the second place, they were to remain open to settlement by the Choctaws and Chickasaws, as before the lease.

But on the 27th day of September, 1830, ten years after the Choctaws had purchased and paid for their western country including this land west of the 100th meridian, the United States caused the following article to be inserted in a new treaty between the United States and the Choctaw nation:

Art. 2. The United States, under a grant specially to be made by the president of the United States, shall cause to be conveyed to the Choctaw nation a tract of country west of the Mississippi river in fee-simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas river; running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red river and down Red river to the west boundary of the territory of Arkansas; thence north along that line to the beginning. 7 Stat., 331.

In this article the western line of the Choctaw country is declared to extend from "the source of the Canadian fork, *if in the limits of the United States*," due south to Red river. But there was no such "if" in the deed by which the Choctaws acquired this land, on the 18th of October, 1820, and under which they had already held or claimed to hold it for ten years.

What is the explanation of this new demarkation of the western boundary of the Choctaw country? And what is its bearing upon the right of the Choctaws to compensation for the relinquishment subsequently made by them in the treaty of June 22, 1855? The explanation of this change of boundary is this: After the United States had sold this land to the Choctaws and received payment in full therefor, the United States sold the same land, out from under the Choctaws, to the king of Spain. On the 19th day of February, 1821, four months after the purchase of this land by the Choctaws, the senate of the United States ratified a treaty whereby the United States sold the western part of the province of Louisiana, including the land of the Choctaws west of the 100th meridian to the Spanish king in part payment for the much-coveted province of Florida. This treaty was signed on the 22d of February, 1819; but it had been rejected by the king of Spain. Pending the negotiation of the treaty by which the United States sold this land to the Choctaws, the United States never disclosed to the Choctaws their purpose to sell the land to a foreign power. The Choctaws were not apprised that the consummation of such a sale to the king of Spain awaited a possible ratification by that king of a treaty which had stood rejected for nearly two years, and its subsequent ratification by the senate of the United States. And yet this Spanish treaty divested the Choctaws of their legal title to the land west of the 100th meridian, which the United States had previously deeded to them, and for which they had fully paid. Indeed, when the United States sold this land to the Choctaws, without notifying them of the negotiations with Spain, it was far from being certain or even probable in the minds of the legislative and executive officers of the government of the United States, that the exchange of western Louisiana for Florida would be consummated; for not only had the king of Spain rejected the treaty, but a vigorous opposition to the exchange of western Louisiana for Florida had sprung up in the congress of the United States, based on the ground that the price to be paid for Florida was extrava-

gantly large, and also on the ground that the sale of the territory of the United States to a foreign government, by the president and senate, in the exercise of the treaty-making power, without the co-operation of the house of representatives, was unconstitutional and void. On the 28th day of March, 1820, Henry Clay, of Kentucky, introduced the following resolutions in the house of representatives of the United States :

1. Resolved, that the constitution of the United States vests in congress the power of disposing of the territory belonging to them, and that no treaty, purporting to alienate any portion thereof, is valid without the concurrence of congress.

2. Resolved, that the equivalent proposed to be given by Spain to the United States, in the treaty concluded between them on the 22d day of February, 1819, for that part of Louisiana lying west of the Sabine, was inadequate, and that it would be inexpedient to make a transfer thereof to any foreign power, or to renew the aforesaid treaty.

On the 3d day of April, 1820, Mr. Clay delivered a speech in the house of representatives, in support of these resolutions, in which he used this language :

The first resolution which he had presented asserted that the constitution vests in the congress of the United States the power to dispose of the territory belonging to them, and that no treaty purporting to alienate any portion thereof is valid without the concurrence of congress. The proposition which it asserts was, he thought, sufficiently maintained by barely reading the clause in the constitution on which it rests ;

'The congress shall have power to dispose of, etc., the territory or other property belonging to the United States.' * * *

But in the Florida treaty it was not pretended that the object was simply a declaration of where the western limit of Louisiana was. It was, on the contrary, the case of an avowed cession of territory from the United States to Spain. * * *

On the second resolution, he said :

It results then, that we have given for Florida, charged and encumbered as it is, first, unencumbered Texas ; second, five millions of dollars ; third, a surrender of all our claims upon Spain not included in that five millions ; and, fourth, if the interpretation of the treaty which he had stated were well founded, about a million of acres of the best unseated land in the state of Louisiana worth perhaps about ten millions of dollars. The first proposition contained in the second resolution was thus, Mr. C. thought, fully sustained. The next was, it was inexpedient to cede Texas to any foreign power. Mr. C. said he was opposed to the transfer of any part of the territory of the United States to any foreign power. They constituted, in his opinion, a sacred inheritance of posterity which we ought to preserve unimpaired. He wished it was, if it were not, a fundamental and available law of the land, that they should be inalienable to any foreign power. * * *

The last proposition which the second resolution affirms, is that it is inexpedient to renew the treaty. If Spain had promptly ratified it, bad as it is,

he would have acquiesced in it. After the protracted negotiation which it terminated, after the irritating and exasperating correspondence which preceded it, he would have taken the treaty as a man who has passed a long and restless night, turning and tossing in his bed, snatches at day an hour's disturbed repose. But she would not ratify it; she would not consent to be bound by it and she has liberated us from it. * * * Let us put aside the treaty; tell her to grant us our rights to their uttermost extent. And if she still palters, let us assert those rights by whatever measures it is for the interest of our country to adopt. Ann. Cong., 16th Cong., 1st sess., vol. 2, pp. 1691, 1724, 1725, 1726, 1729, 1730, and 1731.

The final ratification of the Spanish treaty extinguished the title of the Choctaws to their land west of the 100th meridian; but it did not extinguish their right of reclamation against the United States for this land, which had been sold to the Choctaws by the United States and paid for by the Choctaws, and then sold without the knowledge or consent of the Choctaws to the king of Spain. When the Choctaw treaty of 1830 was signed, the United States, being apprehensive that a part of the land sold to the Choctaws, by metes and bounds, in 1820, would prove to be within the boundaries of the land subsequently sold to Spain, in part payment for Florida, insisted upon such a modification of the boundaries of the Choctaw nation as should, in effect, make its western line coincident with the eastern line of the land sold to Spain. By the Spanish treaty the eastern boundary of that part of Louisiana which was ceded to Spain in exchange for Florida, was fixed as follows:

Art. 3. The boundary line between the two countries west of the Mississippi shall begin on the gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the thirty-second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches or Red river; then following the course of the Rio Roxo westward to the degree of longitude one hundred west from London and twenty-three from Washington; then crossing the said Red river and running thence by a line due north to the river Arkansas; thence following the course of the southern bank of the Arkansas to its source in latitude forty-two north, and thence by that parallel of latitude to the south sea. 8 Stat. 254.

The stipulation in the Choctaw treaty of 1830, as to boundaries, was a mere recognition of what had been for nine years an accomplished fact. It was only a recognition of the fact that so much of the land sold to the Choctaws on the 18th day of October, 1820, as lay west of the 100th meridian, had

been sold to Spain, on the 19th day of February, 1821, and that the title of the Choctaws thereto had been extinguished by such sale. It was in no sense a stipulation, either express or implied, on the part of the Choctaws, to waive their right to reimbursement for the lands which they had bought and paid for, and then involuntarily lost. If this land had not been the property of the United States, when the United States conveyed it to the Choctaws and received payment therefor from the Choctaws, the right of the Choctaws to reimbursement would have been incontestable. *A fortiori* was the right to reimbursement incontestable when the United States, having sold the land to the Choctaws and received full payment for it, subsequently sold it, without their knowledge or consent, to the king of Spain. If the great republic of the United States shall seek in this treaty of 1830 for some technical ground on which to base the claim that the Choctaws, by recognizing the fact that the United States had sold their land out from under them to the king of Spain, waived their right to compensation for the injury thereby inflicted on them, it will seek in vain even for such a pretext for evading its duty to make just compensation for the confiscation and sale of these Choctaw lands.

It was with good reason, then, that the United States and the Choctaws stipulated in the treaty of June 22, 1855, for the relinquishment of the interest of the Choctaws in the land west of the 100th meridian. This stipulation was not a merely nominal stipulation for the relinquishment of an intangible, nebulous, imaginary claim, but was a *bona fide* stipulation, entered into for the relinquishment of a substantial right recognized as such by both parties to the treaty.

Although the Chickasaws purchased from the Choctaws an undivided interest in the Choctaw country west of the Mississippi, *after* the extinguishment of the legal title of the Choctaws to the land west of the 100th meridian of longitude by the ratification of the Spanish treaty of 1820, and therefore strictly speaking the Chickasaws never held a technical legal title to the land west of that meridian, nevertheless, the pur-

pose and effect of the several treaties between the Chickasaws and Choctaws were to so adjust the interests of the two nations that the Chickasaws held, at the time of the relinquishment of the Choctaw title, in 1855, an undivided one-fourth part of the claim for reimbursement against the United States on account of the sale of the land west of the 100th meridian to the king of Spain. The following are the treaty stipulations bearing on this point:

(1) The treaty of January 17, 1837:

Art. 1. It is agreed by the Choctaws that the Chickasaws shall have the privilege of forming a district within the midst of their country, to be held on the same terms that the Choctaws now hold it, except the right of disposing of it, which is held in common with the Choctaws and Chickasaws, to be called the Chickasaw district of the Choctaw nation; to have an equal representation in their general council, and to be placed on an equal footing in every other respect with any of the other districts of said nation, except a voice in the management of the consideration which is given for these rights and privileges; and the Chickasaw people to be entitled to all the rights and privileges of Choctaws, with the exception of participating in the Choctaw annuities and the consideration to be paid for these rights and privileges, and to be subject to the same laws to which the Choctaws are; but the Chickasaws reserve to themselves the sole right and privilege of controlling and managing the residue of their funds, as far as is consistent with the late treaty between the said people and the government of the United States, and of making such regulations and electing such officers for that purpose as they may think proper. 7 Stat. 605.

Art. 2. The Chickasaw district shall be bounded as follows, viz: Beginning on the north bank of Red river, at the mouth of Island bayou, about 8 or 10 miles below the mouth of False Wachitta; thence running north, along the same channel of said bayou, to its source; thence along the dividing ridge between the Wachitta and Low Blue rivers to the road leading from Fort Gibson to Fort Wachitta; thence along said road to the line dividing Musha-la-tubbee and Push-meta-haw districts; thence eastwardly, along said district line, to the source of Brushy creek; thence down said creek to where it flows into the Canadian river, ten or twelve miles above the mouth of the south fork of the Canadian; thence west along the main Canadian river to its source, if in the limits of the United States, or to those limits; and thence due south to Red river, and down Red river to the beginning. 7 Stat. 605.

Art. 3. The Chickasaws agree to pay the Choctaws, as a consideration for these rights and privileges, the sum of \$530,000; \$30,000 of which shall be paid at the time and in the manner that the Choctaw annuity of 1837 is paid; and the remaining \$500,000 to be invested in some safe and secure stocks, under the direction of the government of the United States, redeemable within the period of not less than twenty years; and the government of the United States shall cause the interest arising therefrom to be paid annually to the Choctaws, in the following manner: \$20,000 of which to be paid as the present Choctaw annuity is paid for four years, and the residue to be subject to the control of the general council of the Choctaws; and after the expiration of the four years the whole of said interest to be subject to the entire control of the said council. 7 Stat. 605.

(2) The treaty of November 4, 1854:

Art. 1. It is agreed by the Choctaw and Chickasaw tribes of Indians, in lieu of the boundaries established under Article 2 of the convention and agreement entered into between said tribes January 17, A. D. 1837, the Chickasaw district of the Choctaw nation shall be bounded as follows, viz: Beginning on the north bank of Red river, at the mouth of Island bayou, where it empties into Red river, about 26 miles on a straight line below the mouth of False Wachitta; thence running a northwesterly course, along the main channel of said bayou, to the junction of three prongs of said bayou nearest the dividing ridge between Wachitta and Low Blue rivers, as laid down upon Capt. R. L. Hunter's map; thence northerly, along the eastern prong of Island bayou, to its source; thence due north to the Canadian river; thence west, along the main Canadian, to the 100th degree of west longitude; thence south to Red river and down Red river to the beginning: *Provided, however*, If the line running due north, from the eastern source of Island bayou to the main Canadian, shall not include Allen's or Wapanacka Academy within the Chickasaw district, then an offset shall be made from said line, so as to leave said Academy two miles within the Chickasaw district, north, west, and south from the lines of boundary. 10 Stat. 1116.

(3) The treaty concluded June 22, 1855:

Art. 9. The Choctaw Indians do hereby absolutely and forever quit-claim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the 100th degree of west longitude, and the Choctaws and Chickasaws do hereby lease to the United States all that portion of their common territory west of the 98th degree of west longitude, for the permanent settlement of the Wichita and such other tribes or bands of Indians as the government may desire to locate therein. * * * 11 Stat. 613.

Art. 10. In consideration of the foregoing relinquishment and lease, and as soon as practicable after the ratification of this convention, the United States will pay to the Choctaws the sum of \$600,000 and to the Chickasaws the sum of \$200,000 in such manner as their general councils shall respectively direct. 11 Stat. 615.

Inasmuch as the Chickasaws were not only the legal owners of an undivided fourth part of the lands between the 98th and 100th meridians, but were also equitably entitled to one-fourth of the price paid for the relinquishment of the right, title, and interest of the Choctaws in and to the lands west of the 100th meridian, it was stipulated in this treaty that one-fourth of the aggregate sum of \$800,000, paid for the relinquishment and lease, should be received by the Chickasaw nation, and three-fourths by the Choctaw nation.

Your memorialists therefore assert, with absolute confidence, that the entire sum of \$800,000, paid in pursuance of the treaty of June 22, 1855, was justly applicable to the extinguishment of the legal and equitable obligation resting upon the United States to make compensation for the interests west

of the 100th meridian relinquished by the Choctaws, and that, as a consequence, whenever the tenure by which the United States hold the lands of the Choctaws and Chickasaws between the 98th and 100th meridians shall be relieved of the express trusts which now adhere to those lands, and the lands shall be opened, as it is manifestly the interest of the people of the United States that they shall be opened, to settlement under the homestead laws or otherwise, it will then be the right of the Choctaws and Chickasaws to demand, and the duty of the United States to pay, the just value of those lands to the Choctaw and Chickasaw nations.

But will it be asserted that the United States, by the treaty of April 28, 1866, have already succeeded in acquiring complete beneficial ownership of and absolute title to the lands between the 98th and 100th meridians, divested of the trusts expressly created by the lease of 1855, and of all other trusts? Your memorialists respectfully submit that there is no foundation in justice or in law for such an assertion. At the time when this treaty of April 28, 1866, was made, a large body of freedmen, several thousands in number, resided within the limits of the Chickasaw and Choctaw nations, intermingled with the Chickasaw and Choctaw people, and occupying and using at pleasure their lands without let or hindrance on the part of the Chickasaws or Choctaws. It had become exceedingly desirable to the Chickasaws and Choctaws that these freedmen should dwell in a separate country. It was also the opinion of the authorities of the United States that a separation of the freedmen from the Indians would be best for all concerned.

The Choctaws and Chickasaws had, by the treaty of 1855, leased to the United States their lands west of the 98th meridian, for the permanent settlement of Indian tribes whose homes and ranges were within certain designated limits; but by the terms of that lease, *the Choctaws and Chickasaws had expressly reserved to themselves the right to occupy and use these leased lands, as theretofore.* The language of the treaty,

as we have seen, was this : "*Provided, however, the territory so leased shall remain open to settlement by Choctaws and Chickasaws, as heretofore.*" These lands contained 7,713,239 acres. The Choctaws and Chickasaws deemed it best that the United States should remove the freedmen to these lands, and were willing, if the United States would make such removal to surrender their reserved right to use and occupy them. Accordingly, in the treaty of April 28, 1866, it was agreed that the United States should remove to the country west of the 98th meridian, such of the freedmen as should be willing to go, and out of the sum of \$300,000, mentioned in the treaty, should pay to each freedman removed the sum of \$100. The sum of \$300,000 was not intended as compensation of any kind for the Chickasaws or Choctaws, but was intended for payment to the freedmen, estimated to number 3,000, at \$100 per capita. In order to carry out this arrangement, the Choctaws and Chickasaws relinquished their right to use and occupy the lands west of the 98th meridian, which right had been expressly reserved in the lease of 1855, and "ceded" a trust estate in these lands to the United States subject, not only to the express trust, created by the terms of the lease, to make permanent settlements of certain Indian tribes thereon, but also to the additional trust, created by the treaty of April 28, 1866, to remove thereto such of the Choctaw and Chickasaw freedmen as should be willing to go.

Will it be asserted that the effect of article three of the treaty of April 28, 1866, was to invest the United States with an absolute title to the land between the 98th and 100th meridians, not only free from any trust for the removal thereto of Choctaw and Chickasaw freedmen, but also relieved of the trust imposed by the terms of the lease of June 22, 1855? Your memorialists respectfully submit that, even if article 3 could be torn from its context in this treaty, and the relations between this treaty and the treaty of June 22, 1855, and all other treaties entered into by the same parties annihilated, it would be impossible for the supreme court of the United States or

any other judicial tribunal to conclude that the article under consideration constituted the United States not the mere grantees of a trust estate, but the absolute owners, beneficial and equitable, as well as legal, of the land between the 98th and 100th meridians. But your memorialists believe that when this article is read, as it must be read, in the light of the other articles of the same treaty and of the treaty of June 22, 1855, and of those facts of public history of which courts are bound to take judicial notice, the conclusion will be inevitable and irresistible that the United States hold those lands not in their own right, but as trustees of two trusts, the first being to locate thereon Indian tribes whose homes and ranges were within certain designated limits, the second being to locate thereon so many of the freedmen as should be willing to remove from the Choctaw and Chickasaw nations, and to hold the sum of \$300,000 named in the treaty for the use and benefit of such freedmen.

The phraseology of the first clause of this article is such that the first impression made by it might be that the consideration of \$300,000, therein named, was to move directly from the United States to the Chickasaws and Choctaws. But such an impression would be wholly erroneous. This sum of \$300,000 was to be paid by the United States, not to the Chickasaws and Choctaws, but to the freedmen. It was to go to the Choctaws and Chickasaws only upon the concurrence of two events, (1) the grant of Indian citizenship to the freedmen, and (2) the refusal of freedmen to emigrate. This sum was fixed at \$300,000, because the number of the freedmen was estimated at 3,000, and it was agreed that each freedman should receive, for the expenses incident to emigration, the sum of one hundred dollars. If the United States had consummated the scheme of this article, by removing the freedmen, every dollar of the \$300,000 would have been paid to the freedmen. The following is the text of this article :

Article III. The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98th degree west longitude, known as the leased district,

provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent., in trust for the said nations, until the legislatures of the Choctaw and Chickasaw nations respectively shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by, or belonging to, said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter.—less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper—the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

If Article 3 shall be considered without reference to any other article of the same treaty or to any provisions of other treaties, it will be found, upon a careful analysis of that article, that it contains the following substantive provisions:

(1) It was agreed that if the Chickasaws and Choctaws should not make the freedmen citizens of their nation, the United States would within two years and ninety days from July 10, 1866, "remove from said nations all such persons of African descent as may be willing to remove."

(2) It was agreed that the Choctaws and Chickasaws should cede to the United States the land between the 98th and 100th meridians.

(3) It was the intent and purpose and the implied agreement of all the parties to the treaty, that the lands so ceded should be used for the settlement of the freedmen to be re-

moved by the United States, as well as for the permanent settlement of "Indian tribes or bands."

(4) The sum of \$300,000 was to be held, at five per cent. interest, in trust for the Choctaws and Chickasaws by the United States for a period of two years, unless before the expiration of that period the Chickasaws and Choctaws should confer citizenship upon the freedmen, or some of the freedmen should elect to leave and should actually leave the Choctaw and Chickasaw nations.

(5) If the Choctaws and Chickasaws, before the expiration of two years, should confer citizenship upon the freedmen, this sum of \$300,000 was to be immediately paid to the Choctaw and Chickasaw nations, less \$100 for each freedman who should emigrate within ninety days after citizenship should be conferred upon the freedmen.

(6) If the Chickasaws and Choctaws should not confer citizenship upon the freedmen, before the expiration of the period of two years, then said sum of \$300,000 should cease to be held in trust for the Chickasaws and Choctaws, and should be held in trust for the use and benefit of such freedmen as the United States should remove from the Chickasaw and Choctaw nations.

(7) It was agreed that those freedmen "remaining or returning after having been removed from said nations" should "have no benefit of said sum of \$300,000."

(8) If the Choctaws and Chickasaws should not confer citizenship upon the freedmen, and if at the same time the freedmen should not consent to remove, then the provisions of Article 3 made this sum of \$300,000 the property of the United States.

This article of the treaty of 1866 standing alone, then shows a cession by the Choctaws and Chickasaws to the United States of 7,713,239 acres of land, unsurpassed in point of fertility by any body of land of equal area within the limits of the United States. If the sum of \$300,000, named in this article, constituted the sole consideration for the conveyance

and the United States became the absolute owners of the land in their own right, and not the mere grantees of a trust estate therein, then the remarkable spectacle is presented of a purchase, by the great republic of the United States, from their feeble and dependent wards, of 7,713,239 acres of land, worth in money \$9,641,548.75 for the nominal consideration of \$300,000, which sum of \$300,000 was to remain the property of the United States if the freedmen should not be removed from the Chickasaw and Choctaw nations or become citizens of those nations, but was to be paid to the freedmen if they should be removed, and was only to be paid to the Choctaws and Chickasaws in the event that they should confer citizenship upon the freedmen and the freedmen should not be removed.

Was such a bargain ever before made between a powerful republican government and a dependent Indian tribe? Was such a bargain ever made between an honest guardian and a helpless ward? It has often happened that knavish Indian traders have persuaded Indians to exchange property of great value for worthless trinkets; but the acquisition by the United States, from the Chickasaws and Choctaws, of 7,713,239 acres of land, worth \$9,641,548.75, for a merely nominal consideration, which nominal consideration was not to pass to the Choctaws and Chickasaws at all, unless they should make citizens of the freedmen, and the freedmen should refuse to emigrate, would have been a juggle of such gigantic proportions as to overshadow all the petty knavery perpetrated by individual Indian traders for the last hundred years. If the United States shall open this land to settlement by citizens of the United States, without the consent of the Chickasaws and Choctaws, the validity of the deeds of the United States to settlers will doubtless sooner or later be tested in the supreme court of the United States. It is clear to the minds of your memorialists that it will be impossible for the supreme court to adopt such a construction of article 3 of the treaty of 1866 as shall secure to the United States an absolute title, in their own right, unincum-

bered by any trust, of lands worth more than \$9,600,000, for the consideration of \$300,000, which consideration only goes to the Choctaws and Chickasaws in the event that they thereafter, in the manner prescribed, confer citizenship upon the freedmen within their limits and none of the freedmen emigrate. Your memorialists cannot doubt that the supreme court would promptly decide that the United States took this land, as trustees, upon the trusts to settle other Indian tribes thereon, and to remove thereto such freedmen as should consent to go; that the great consideration, which operated upon the minds of the Choctaws and Chickasaws, was the undertaking of the United States to settle Indians thereon, and to relieve them of the presence of several thousands of freedmen, by removing those freedmen to and settling them upon the ceded lands.

But then to restrict our consideration to a single clause or article of a treaty is not a legitimate mode of interpretation. The whole treaty is to be considered; so also are all other treaties bearing upon the same subject. In order to understand the provisions of the third article of the treaty of 1866, we are to examine, not only the text of that article, but also article 10 and article 45 of the same treaty, and article 9 of the treaty of 1855. The following are the provisions of articles 10 and 45 of the treaty of 1866:

Art. 10. The United States reaffirm all obligations arising out of treaty stipulations or acts of legislation, with regard to the Choctaw and Chickasaw nations, entered into prior to the late rebellion, and in force at that time, not inconsistent herewith; and further agree to renew the payment of all annuities and other moneys accruing under such treaty stipulations and acts of legislation, from and after the close of the fiscal year ending on the 30th of June, in the year one thousand eight hundred and sixty-six. 14 Stat. 774.

Art. 45. All the rights, privileges, and immunities, heretofore possessed by said nations or individuals thereof, or to which they were entitled, under the treaties and legislation heretofore made, and had, in connection with them, shall be and are hereby declared to be in full force, so far as they are consistent with the provisions of this treaty. 14 Stat. 779.

Article 9 of the treaty of 1855 is printed on page 1. of this memorial.

On the 17th of February, 1882, the secretary of the interior communicated to the senate of the United States a decision of the commissioner of the general land office. We

quote therefrom, on page three of senate executive document number 111, 47th congress, 1st session, as follows :

The Choctaw and Chickasaw cession of April 28, 1866 (14 Stat. 769) was by the 16th section thereof, made subject to the conditions of the compact of June 22, 1855 (11 Stat. 613), by the 9th article of which it was stipulated that the land should be appropriated for the permanent settlement of such tribes or bands of Indians as the United States might desire to locate thereon. The lands embraced in the Choctaw and Chickasaw cession were also included in a definite district, established by the stipulations of the treaty of 1855, pursuant to the act of congress of May 28, 1830, the United States re-engaging, by the 7th article of the said treaty, to remove and keep out from that district all intruders.

In pursuance of the stipulations of the foregoing compacts and in the exercise of the trusts assumed by the United States, under the several treaties, and in accordance with specific provisions of law, and the lawful orders of the president, all the lands in the Indian Territory, to which the United States has title, have been permanently appropriated or definitely reserved for the uses and purposes named. *The title of the United States to lands in the Indian Territory is, as heretofore shown, subject to specific trusts, and it is not within the lawful power of either the legislative or executive departments of the government, to annihilate such trusts or to avoid the obligations arising thereunder. Such trusts are for the benefit of Indian tribes and Indian freedmen.*

A former secretary of the interior, in an official communication to the secretary of war, dated May 1, 1879, to be found on page 58 of senate executive document number 50, 48th congress, 2 session, had used the following language :

The lands ceded by the Choctaws and Chickasaws were, by Article 9 of the treaty of June 22, 1855, leased to the United States, for the permanent settlement of the Wichita and such other tribes or bands of Indians as the government may desire to locate therein. The treaty of 1866 substituted a direct purchase for the lease, but did not extinguish or alter the trust.

In the case of the United States v. Paine, Judge Parker of the district court of the United States for the western district of Arkansas, in a decision printed on page 41 of senate executive document number 50, 48th congress, second session, held as follows :

Now we must look to the acts of the government since the adoption of this treaty, in order to understand its purpose. We find that in the year 1866 it entered upon the policy of settling tribes of Indians, other than the five civilized tribes, in the Indian country. Since that time, by treaties, laws, and executive orders of the president, it has settled upon reservations in the Indian country the Cheyennes, the Arapahoes, the Kiowas, the Comanches, the Wichitas, the Pawnees, the Sacs and Foxes, the Nez Percés, the Poncas, the Modocs, the Kansas, the Osages, the Pottawatomies, the Absentee Shawnees, as well as some other small tribes. This explains why the treaty-making power thought, on March 21, 1866, that there was an urgent necessity of the government for more lands in the Indian Territory. This shows that the government not only had a desire to locate other Indians in the Indian Territory, but to a great extent it has consummated that desire. It is a matter

of public history that a number of these tribes, which have been removed to the Indian country, taking advantage of the embarrassment of the government growing out of the war of the rebellion, had gone on the war-path. The government was desirous of securing peace with them, and of settling them upon reservations, where they could be civilized. It entered into treaties, by which they were to be and were removable to the Indian country. Then again, the white people in other localities were pressing on other tribes and demanding of the government their removal, to get them out of the way of the white settlements, and to locate them where they would be free from intrusion by whites. They were removed to the Indian country. It is true but few of these tribes were settled on the lands in controversy; but I cite the conduct of the government in order to arrive at its policy in regard to the Indian country, and from that policy I receive aid in the construction of the third article of the Seminole treaty. The government wanted to locate other Indians and freedmen thereon. What did the government mean by locating freedmen thereon? Let us again go back to the time when this treaty was made. We find that colored people were held in slavery in all the civilized tribes of the Indian Territory. Slavery was abolished there, as well as elsewhere in the United States, by the emancipation proclamation of the president, and by the thirteenth amendment to the constitution adopted the 13th of December, 1865; and such abolition of slavery was recognized by these tribes in the several treaties made with them in 1866. The government was desirous of protecting these freedmen, and of securing them homes. It was not known how well the several Indian tribes, who had held them in slavery, would observe their pledges to secure them the rights they enjoyed. It was feared that prejudice, growing out of their former condition as slaves, and of race, would be so strong against them that they would not be protected by the Indians. The government had given them the boon of freedom, and it was in duty bound to secure it in all that the term implied to them. The government feared that to do this it might be necessary to settle them in a colony by themselves. This purpose of the government, should it become necessary, was manifested by the terms of the Choctaw treaty of April 15 (28) 1866.

This public policy of the United States, which Judge Parker invoked as an aid to the interpretation of the Seminole treaty, upon the same grounds of principle affords legitimate aid in the interpretation of the Chickasaw and Choctaw treaty of 1866. It confirms the proposition that, under the treaties of 1855 and 1866, the land lying west of the Chickasaw nation, and between the 98th and 100th meridians of west longitude, was dedicated to the use of Indians other than those of the five civilized tribes, and to the uses of freedmen of the Choctaw and Chickasaw nations.

Since 1866 the government of the United States has wholly neglected either to remove the freedmen willing to go to these lands, or to place those unwilling to go "upon the same footing as other citizens of the United States in the said nations." Since 1866 several thousand Chickasaw freedmen have re-

mained in the Chickasaw country, occupying and using the Chickasaw lands at their pleasure, and wholly exempt from the jurisdiction of the Chickasaw government and the operation of the Chickasaw laws. The United States have never removed a single freedman from either the Chickasaw or Choctaw nations, in fulfilment of the stipulations of the treaty of 1866. But it happened that seventy-two freedmen promised to emigrate from the Choctaw nation, and thereupon the Choctaws authorized the United States to pay, and the United States did pay, to those freedmen, upon proof of their emigration, \$7,200 out of the sum of \$300,000 named in the treaty. The United States have paid to the freedmen, without the consent of the Chickasaws or Choctaws, the further sum of \$23,100 out of said sum of \$300,000, making in all \$30,300.

The Choctaws earned their share of the sum of \$300,000, less \$7,200 paid at their request to the freedmen, by making Choctaw citizens of the Choctaw freedmen. But the freedmen in the midst of the Chickasaws included the Chickasaw freedmen, many of the Choctaw freedmen, a large number of colored soldiers, who had been members of two regiments of United States troops, which were mustered out of service within the limits of the Chickasaw nation, and a large number of colored people from the States who had been attracted to this African stronghold in the Chickasaw nation. And the Chickasaws, finding that these people were likely to outnumber the Chickasaws, and, if made citizens, to take possession of their government, were compelled to refuse and did refuse to confer upon them Chickasaw citizenship, and therefore failed to earn or receive any part of the stipulated sum of \$300,000. On the contrary, a part of that sum which was loaned to the Chickasaws in 1866, in pursuance of article 46 of the treaty, has been reported, and correctly reported, by the Indian office as a charge against the trust fund of the Chickasaw nation. And so it happens that all of said sum of \$300,000 not earned and received by the Choctaws is now the property of the United States.

Inasmuch as the consideration, which prompted the Choct-

taws and Chickasaws to cede these lands in trust to the United States, was the undertaking of the United States to remove the freedmen to those lands, and to settle other tribes of Indians thereon, and that consideration has practically failed, and the exigencies of the government of the United States seem to require the early opening of these lands to settlement by citizens of the United States, the Choctaw and Chickasaw nations are ready to make the United States the absolute owners of these lands free from all incumbrances and trusts, upon payment therefor at the rate of \$1.25 per acre by the United States.

Under similar circumstances the Creeks and Seminoles have relieved the United States from trusts, created by treaty stipulations, by relinquishing their interests in ceded lands; and for such relinquishments the United States have paid them the sum of \$1.25 per acre.

By the treaty concluded March 21, 1866, and proclaimed August 16, 1866 (14 Stat., 755), the Seminoles "ceded and conveyed their entire domain" to the United States. This conveyance was made as stated in the treaty, "in compliance with the desire of the United States to locate other Indians and freedmen" on the lands. There was no express stipulation by the United States to locate any Indians or freedmen thereon. The transaction was not a lease, but a cession and conveyance. The title so conveyed was not incumbered by an express trust for the location of other Indian tribes or of freedmen on the land, or by any other express trust. The only trust created was that which was implied in the words "in compliance with the desire of the United States to locate other Indians and freedmen thereon." The words of the treaty are:

Art. 3. In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Seminoles cede and convey to the United States their entire domain, being the tract of land ceded to the Seminole Indians by the Creek nation under the provisions of Article first (1st) of the treaty of the United States with the Creeks and Seminoles made and concluded at Washington, D. C., August 7, 1856. In consideration of said grant and cession of their lands, estimated at two million one hundred and sixty-

nine thousand and eighty (2,169,080) acres, the United States agree to pay said Seminole nation the sum of three hundred and twenty-five thousand three hundred and sixty-two (\$325,362) dollars, said purchase being at the rate of fifteen cents per acre.

But in the year 1889 the lands which, by this implied trust created in the treaty, were set apart for the use of Indian tribes and freedmen, were required by the United States to be opened for settlement by citizens, like other public lands, and on the 2d day of March, 1889, an act of congress was approved (25 Stat., 1004) whereby the United States appropriated \$1,912,942.02 to pay the Seminoles for the lands ceded by the treaty of 1866, at the price of \$1.25 per acre, less the fifteen cents per acre paid in 1866. By this payment the United States disencumbered the land of the trust created by the treaty of 1866 for the location of Indian tribes and freedmen thereon, and acquired full beneficial ownership in addition to the estate previously held in trust; and the same act made these lands "a part of the public domain of the United States," to "be disposed of to actual settlers under the homestead laws." The following is the language of this act:

SEC. 12. That the sum of one million nine hundred and twelve thousand nine hundred and forty-two dollars and two cents be, and the same hereby is, appropriated out of any money in the treasury not otherwise appropriated, to pay in full the Seminole nation of Indians for all the right, title, interest, and claim which said nation of Indians may have in and to certain lands ceded by article 3 of the treaty between the United States and said nation of Indians which was concluded June 14, 1866, and proclaimed August 16, 1866, and which land was then estimated to contain 2,169,080 acres, but which is now after survey ascertained to contain 2,037,414.62 acres.

In the treaty concluded June 14, 1866, and proclaimed August 11, 1866 (14 Stat., 785), the Creek nation "ceded and conveyed" to the United States, the west half of their entire domain. This conveyance was made, as stated in the treaty, "in compliance with the desire of the United States to locate other Indians and freedmen thereon." The ceded land was estimated to contain 3,250,560 acres, and the price named was thirty cents per acre. This transaction was not a lease, but an actual cession and conveyance of the lands, subject to the trust created by the treaty. In 1889 the government of the United States sought to relieve these lands of the trust, by which the

treaty had encumbered them, in favor of Indian tribes and freedmen, so that they might become a part of the public domain, and be disposed of to settlers under the homestead laws. Accordingly, on the 19th of January, 1889, an agreement was made between the United States and the Creek nation by which the lands were disincumbered of the trust imposed by the treaty of 1866, and the United States agreed to pay for such release the sum of \$2,280,857.10. This agreement contains the following clauses (25 Stat., 757):

And whereas but a portion of said lands, so ceded for such use, has been sold to Indians or assigned to their use, and the United States now desire that all of said ceded lands may be entirely freed from any limitation in respect to the use and enjoyment thereof, and all claims of the said Muskogee (or Creek) nation to such lands may be surrendered and extinguished, as well as all other claims, of whatsoever nature, to any territory except the aforesaid eastern half of their domain: Now therefore these articles of cession and agreement by and between the said contracting parties, witness:

1. That the said Muskogee (or Creek) nation, in consideration of the sum of money hereinafter mentioned, hereby absolutely cedes and grants to the United States, without reservation or condition, full and complete title to the entire western half of the domain of the said Muskogee (or Creek) nation lying west of the division line surveyed and established under the said treaty of 1866, and also grants and releases to the United States all and every claim, estate, right or interest of any and every description in or to any and all land and territory whatever, except so much of the said former domain of the said Muskogee (or Creek) nation as lies east of the said line of division surveyed and established as aforesaid, and is now held and occupied as the home of said nation.

2. In consideration whereof and of the covenants herein otherwise contained, the United States agree to pay to the said Muskogee (or Creek) nation, the sum of \$2,280,857.10.

And an act of congress was approved on the 1st day of March, 1889 (25 Stat. 759) appropriating, in payment for said lands, the sum of \$2,280,857.10, in the following words:

SEC. 3 That for the purpose of carrying out the terms of said articles of cession and agreement, the sum of \$2,280,857 10 is hereby appropriated.

Your memorialists therefore ask that an appropriation be made by congress of a sum sufficient to pay the Choctaws and Chickasaws \$1.25 per acre for their lands between the 98th and 100th meridians of west longitude, upon their relinquishment of all right, title, and interest therein, such sum to be payable three-fourths to the Choctaw nation, and one-fourth to the Chickasaw nation.

And your memorialists hereby offer, in consideration of such appropriation and payment to relinquish to the United States all their right, title, and interest in and to all lands west of the 98th meridian of west longitude.

But if congress shall deem it inexpedient to accept the foregoing offer, your memorialists pray that a law may be enacted providing in substance that upon the relinquishment by the Choctaw and Chickasaw nations of all their right, title, and interest in and to all lands west of the meridian of ninety-nine degrees and ——— minutes west longitude, it shall be the duty of the secretary of the interior to sell at public sale, to the highest bidders, all the lands bounded on the north by the Canadian river, on the east by the 98th meridian of west longitude, on the south by the Red river, and on the west by the meridian of ninety-nine degrees and ——— minutes west longitude, in such subdivisions and under such regulations as to time, place, manner, and terms of sale, as the President shall deem best for the Choctaw and Chickasaw nations and shall prescribe; and the net proceeds of such sales shall be paid one-fourth upon the requisitions of the governor of the Chickasaw nation, and three-fourths upon the requisitions of the principal chief of the Choctaw nation.

B. C. BURNEY,

Chairman Chickasaw Commissioners.

J. D. COLLINS,

OVERTON LOVE,

Chickasaw Delegates.

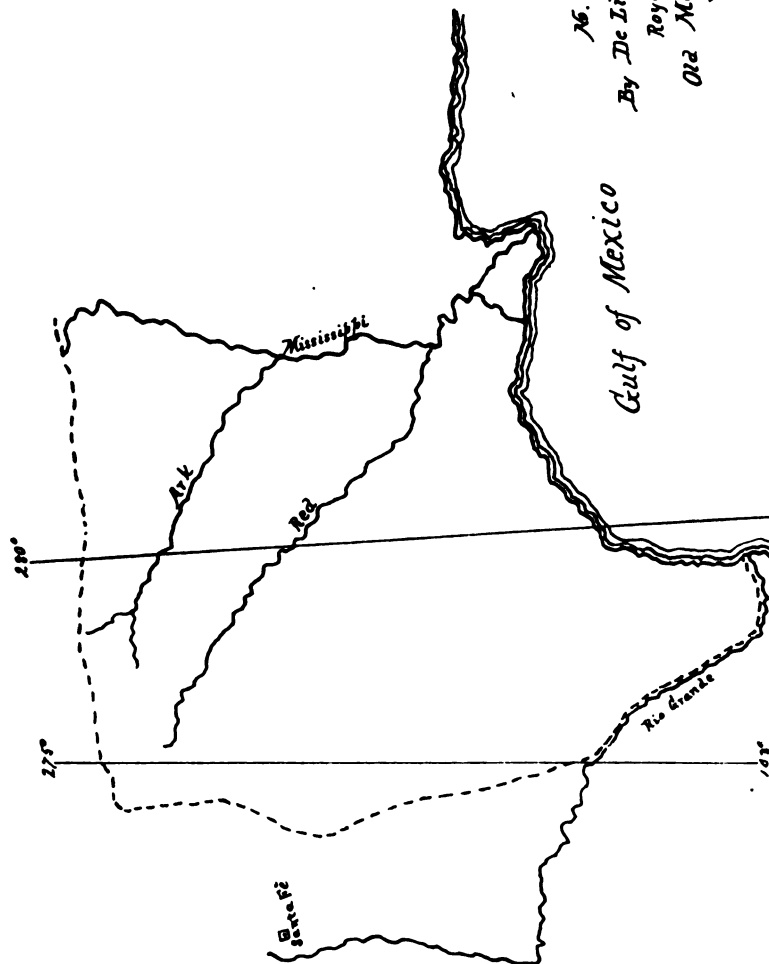
HALBERT E. PAINE,

Counsel.

Annexed are accurate tracings of the seventeen maps mentioned on pages 12 and 13. The dotted lines represent the western boundary of the province of Louisiana.

Map number 18 shows the form and dimensions of the lands west of the 100th meridian of west longitude ceded to the Choctaws by the United States on the 18th. of October, 1820, which ceded lands are divided into townships on the map.

No. 1.



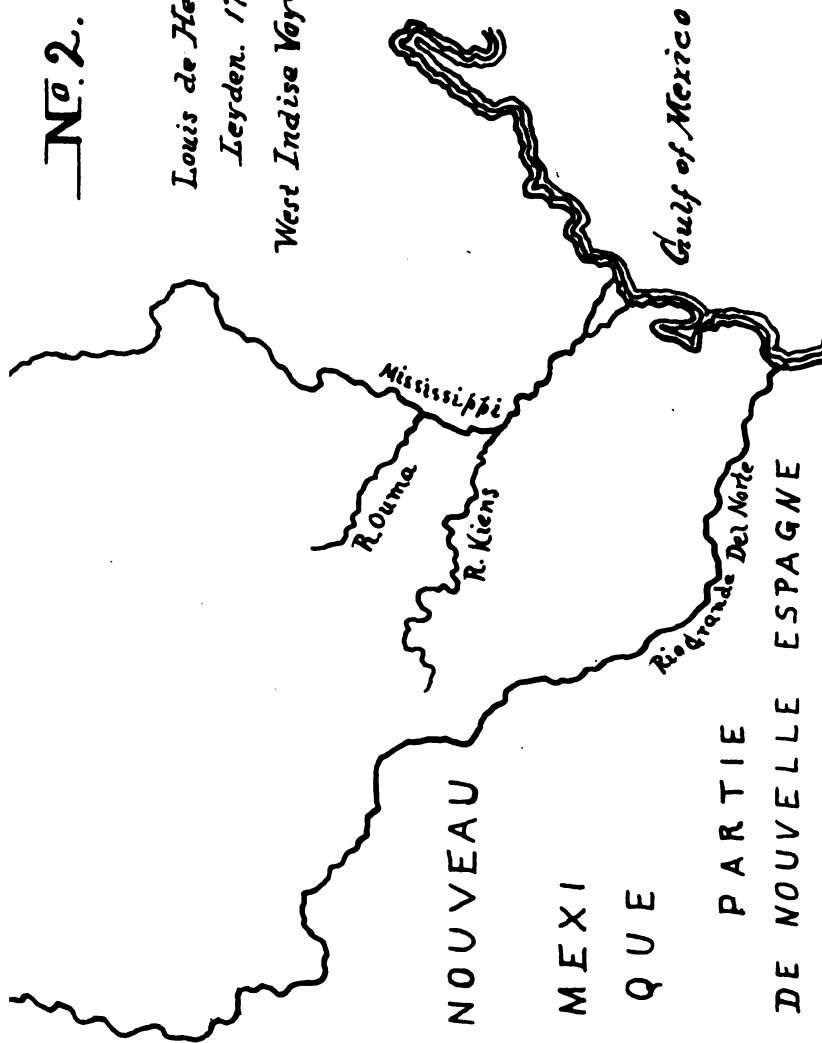
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By De Lisle Geographer of the
Royal Academy.
Old Maps of America.
Vol. 1. No. 8.

Gulf of Mexico

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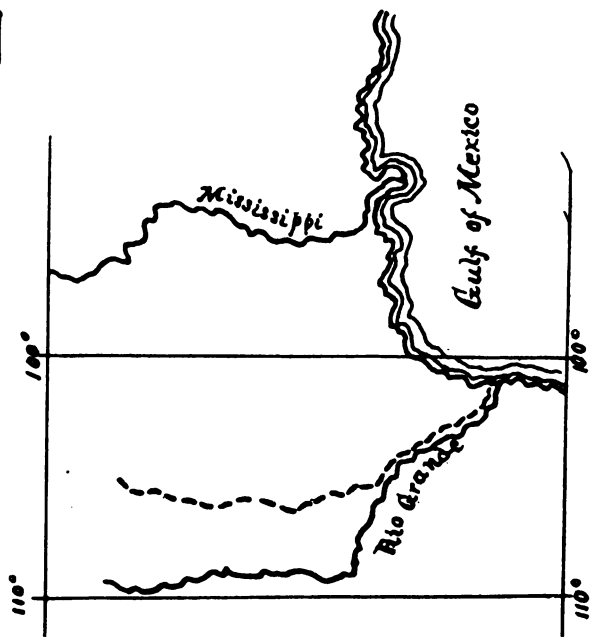
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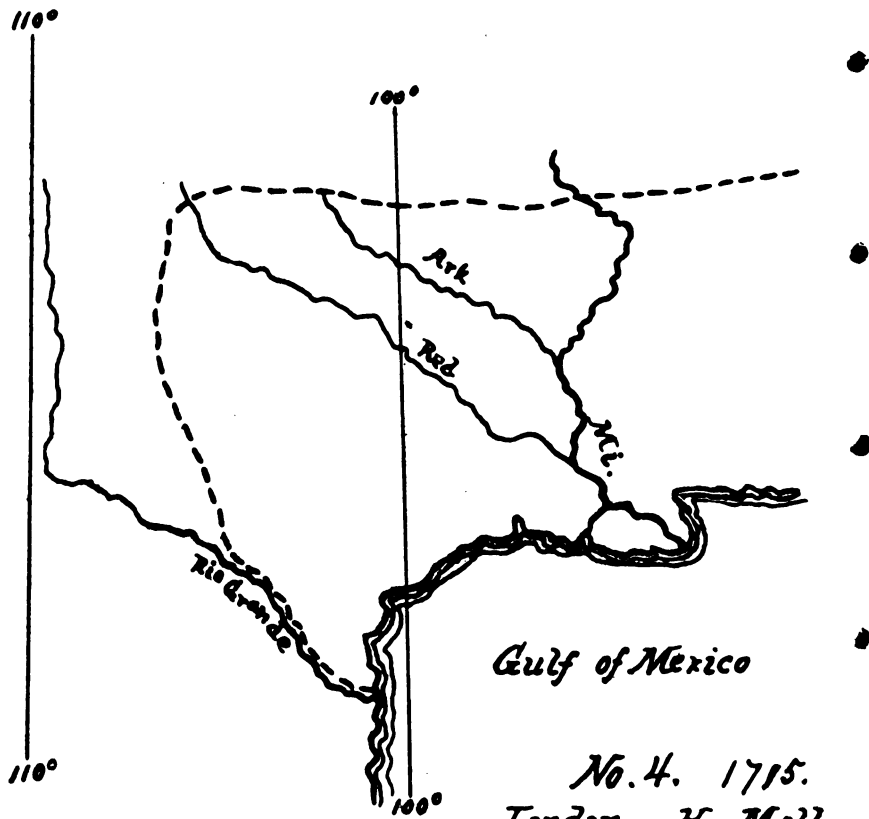
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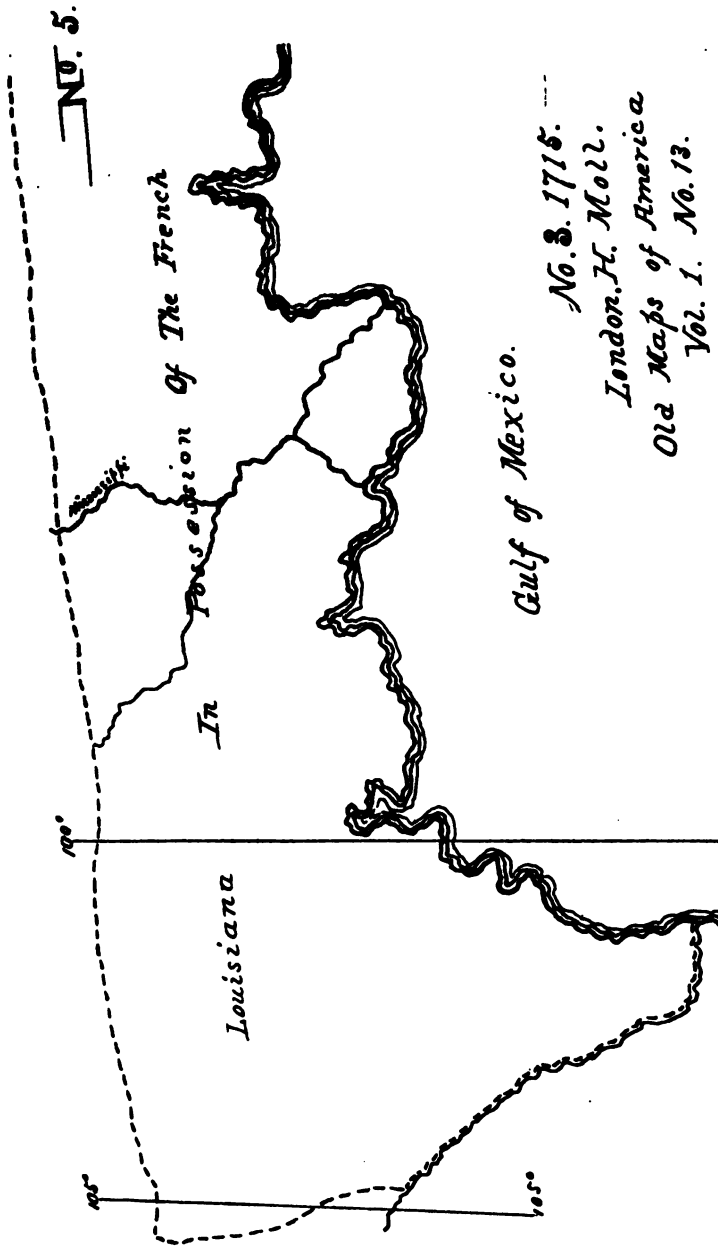
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No. 4. 1715.
London. H. Moll.

To Lord Sommers. Old Maps of America.
Vol. 1. No. 16.





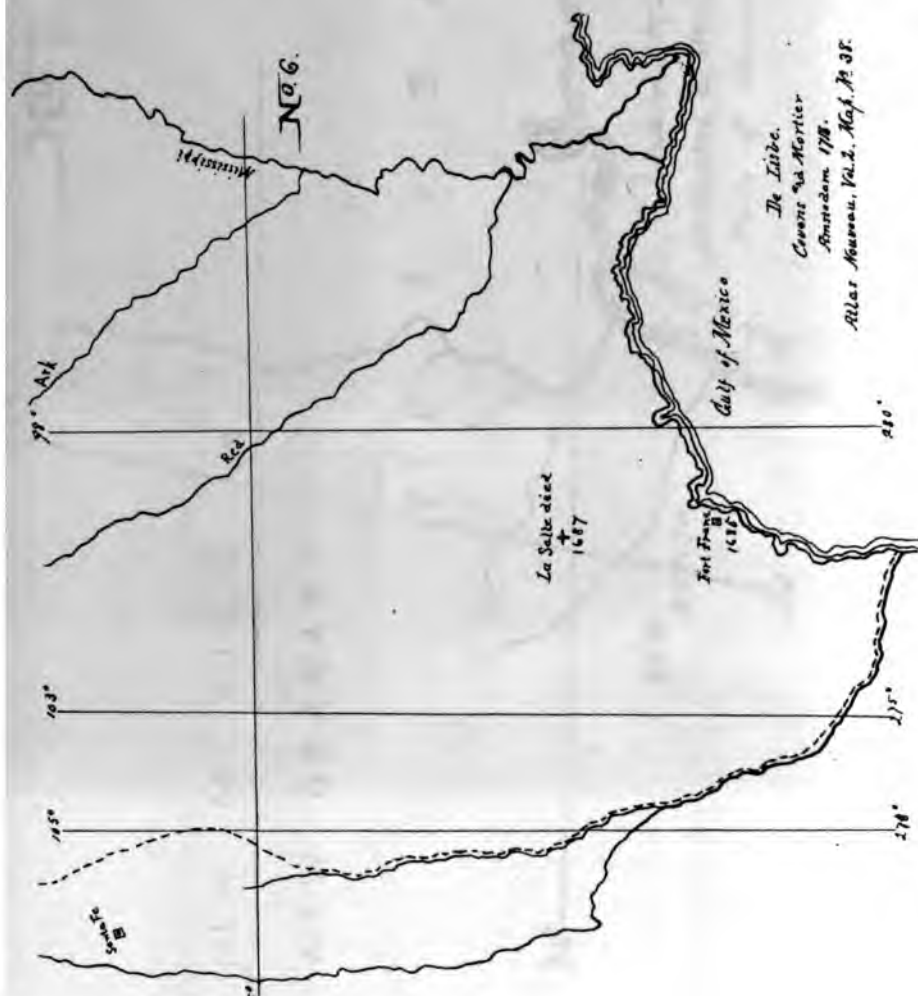
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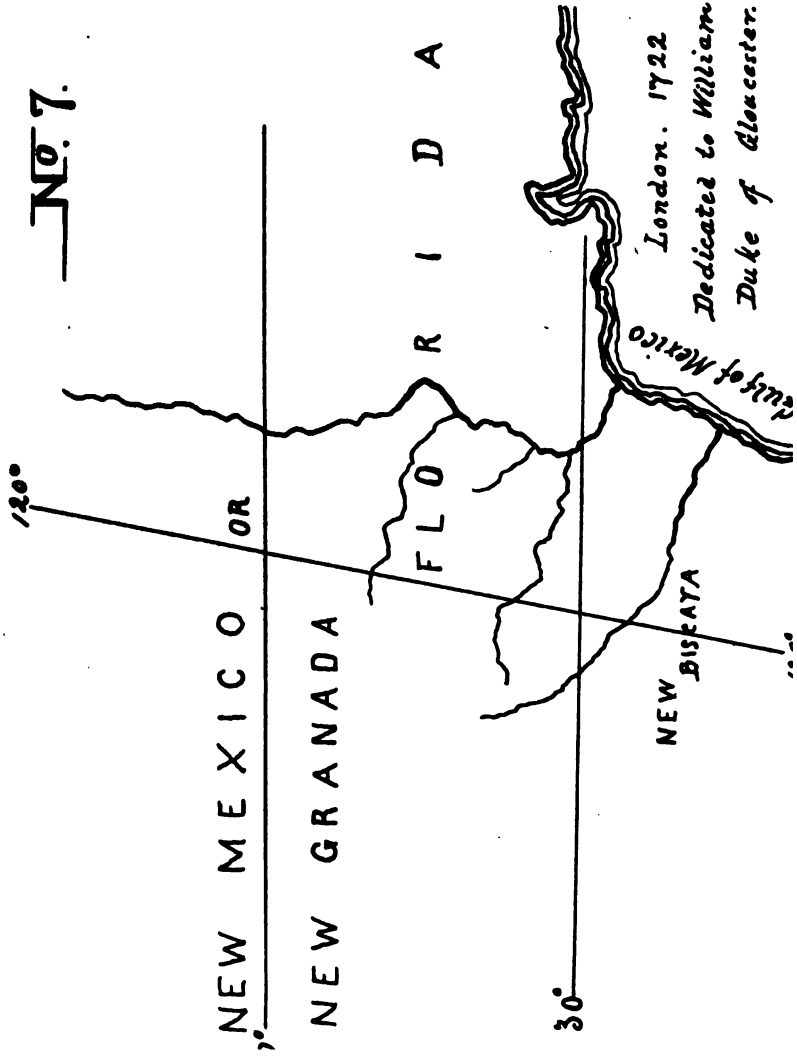
Old Maps of America

Vol. 1. No. 13.



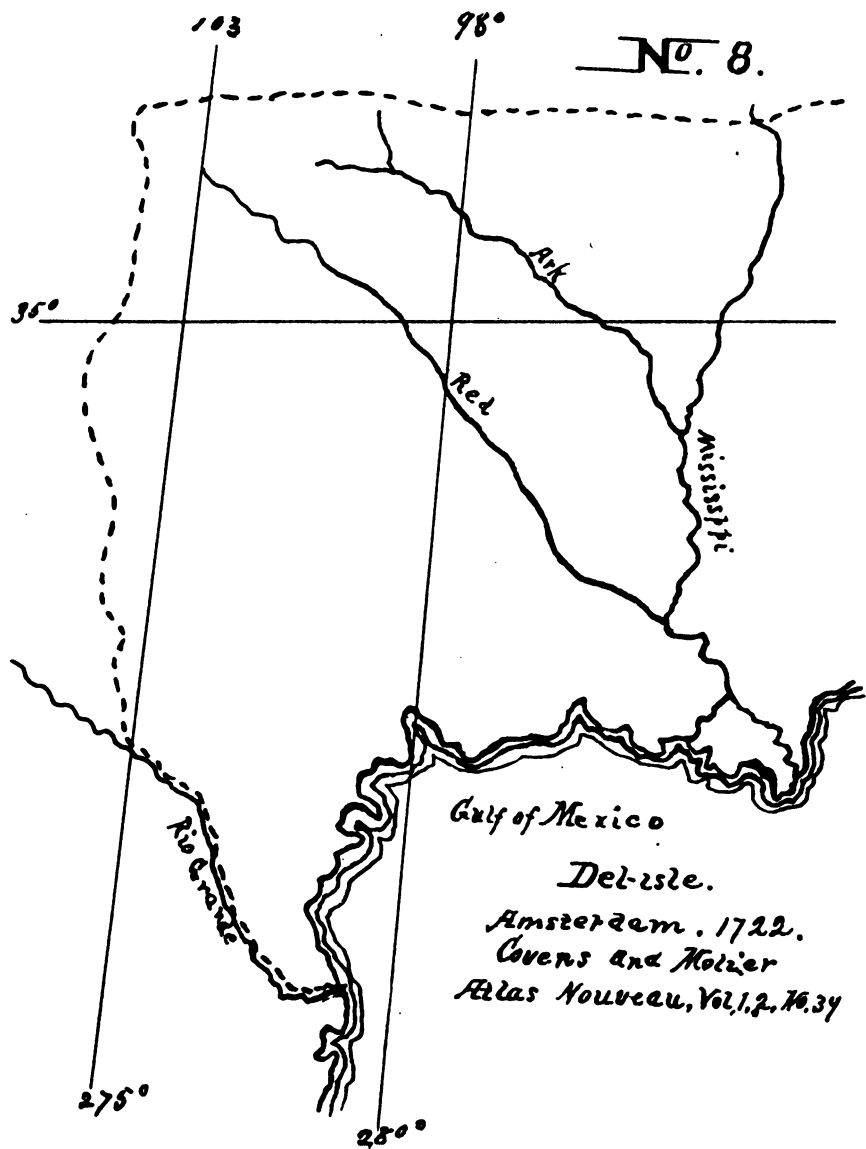






London. 1722
Dedicated to William
Duke of Gloucester.

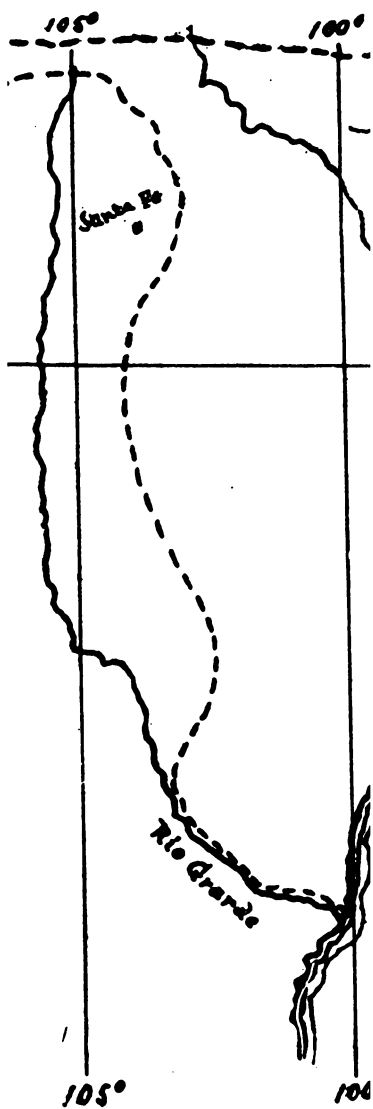




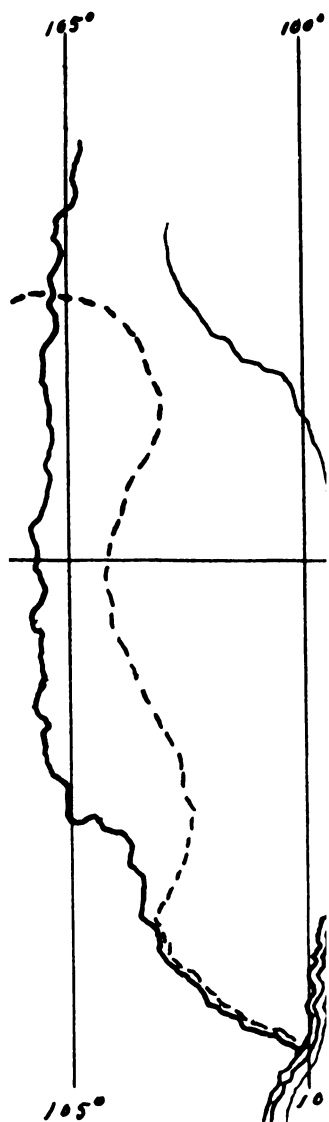












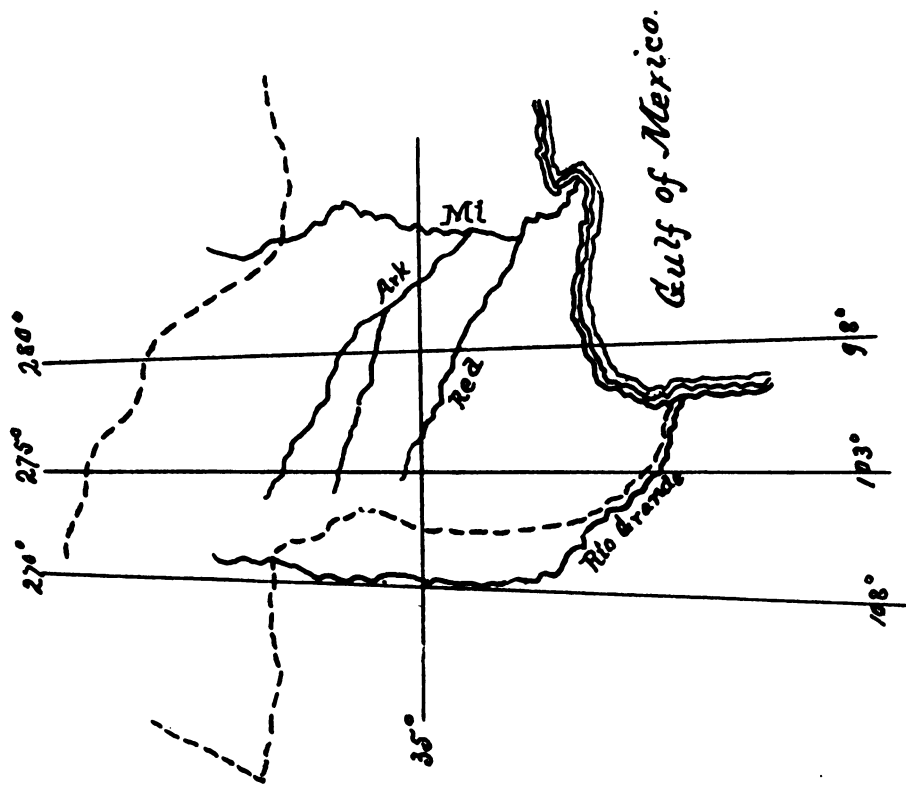


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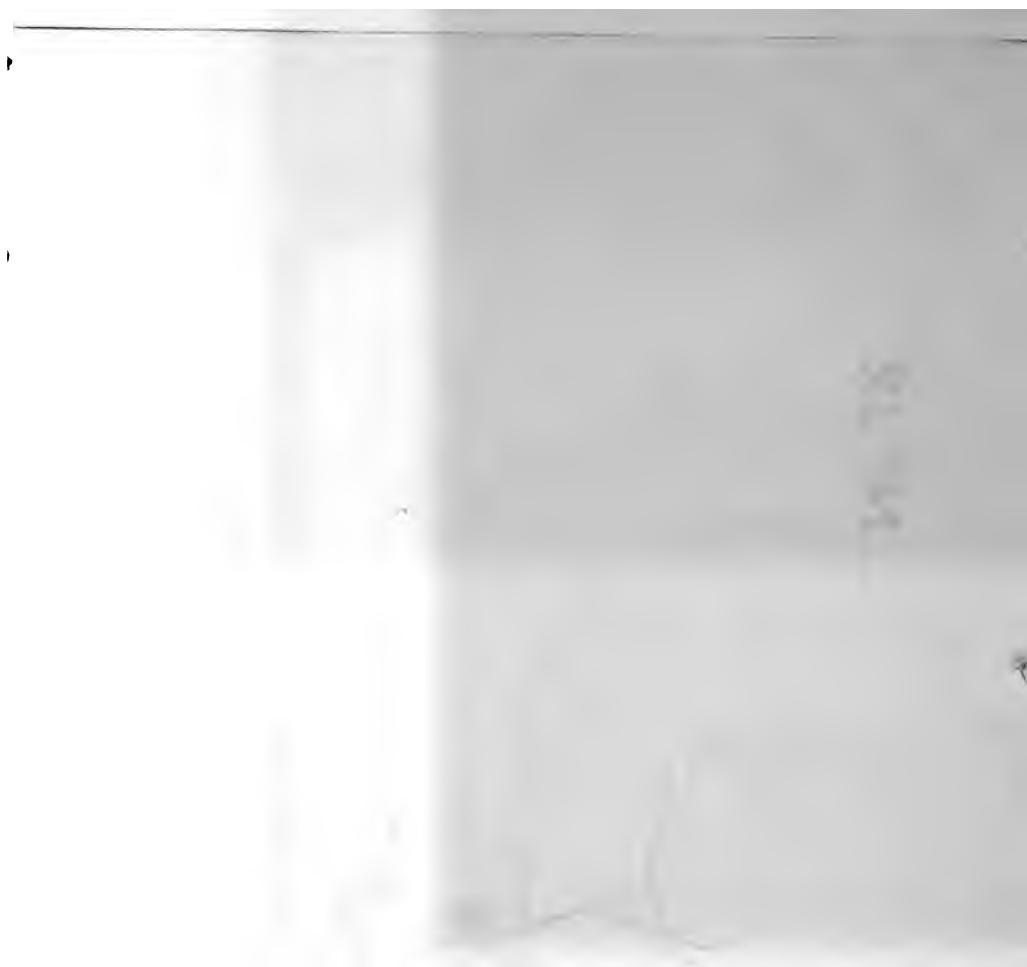
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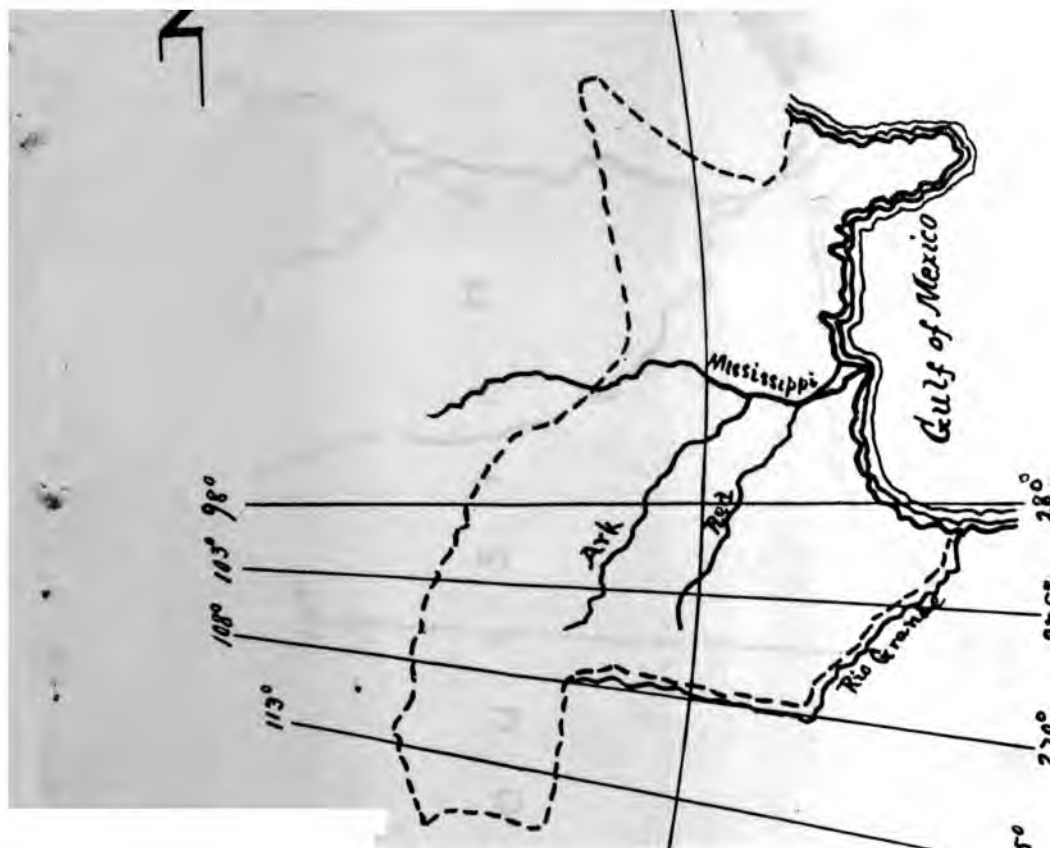
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De Lisle.

Amsterdam, 1739.







American Maps
Vol. 2 No 10 1753

No. 15.

Indians

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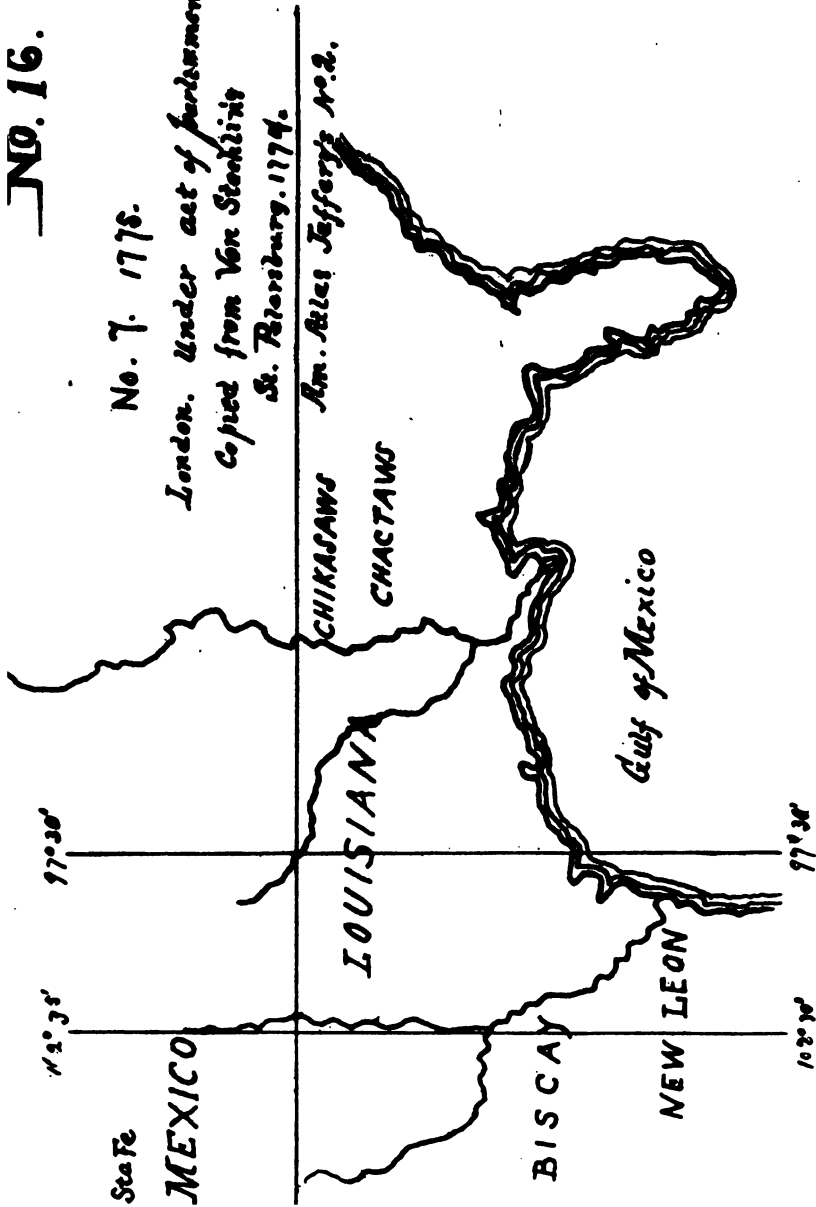
Gulf of Mexico

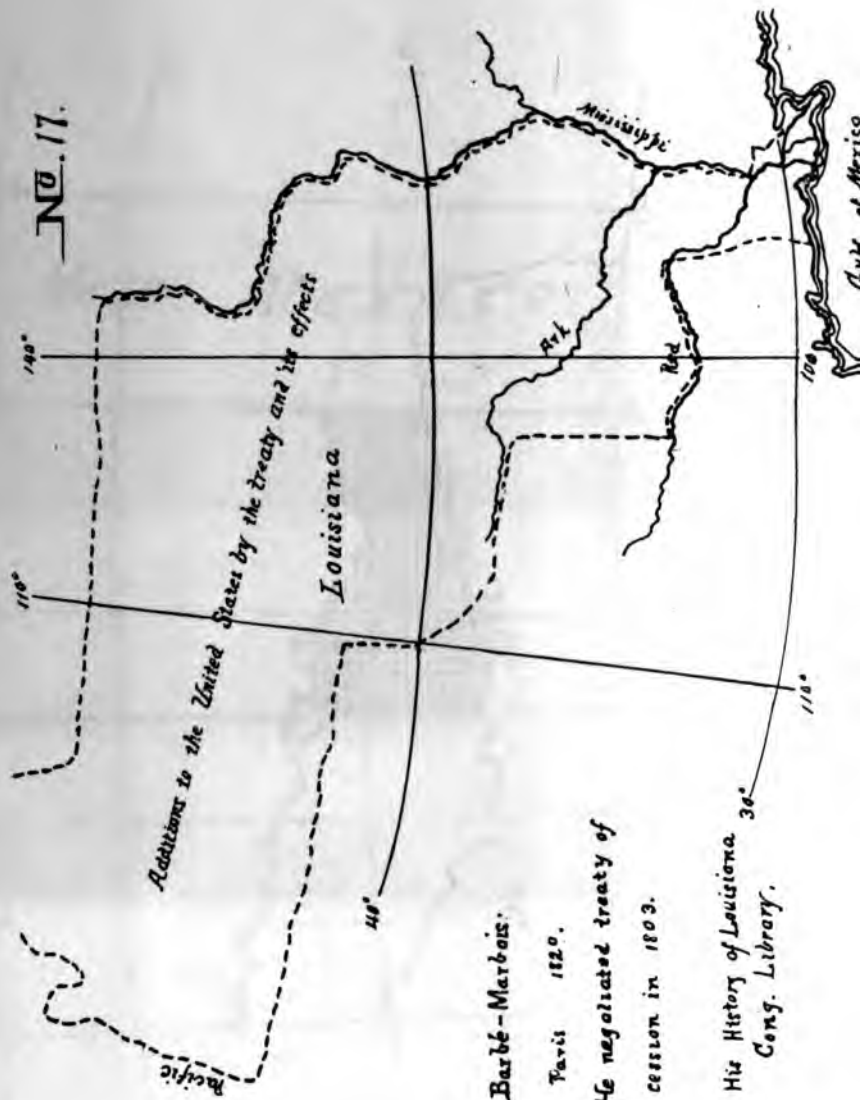
No. 8. 1774.
London Act of Parliament.

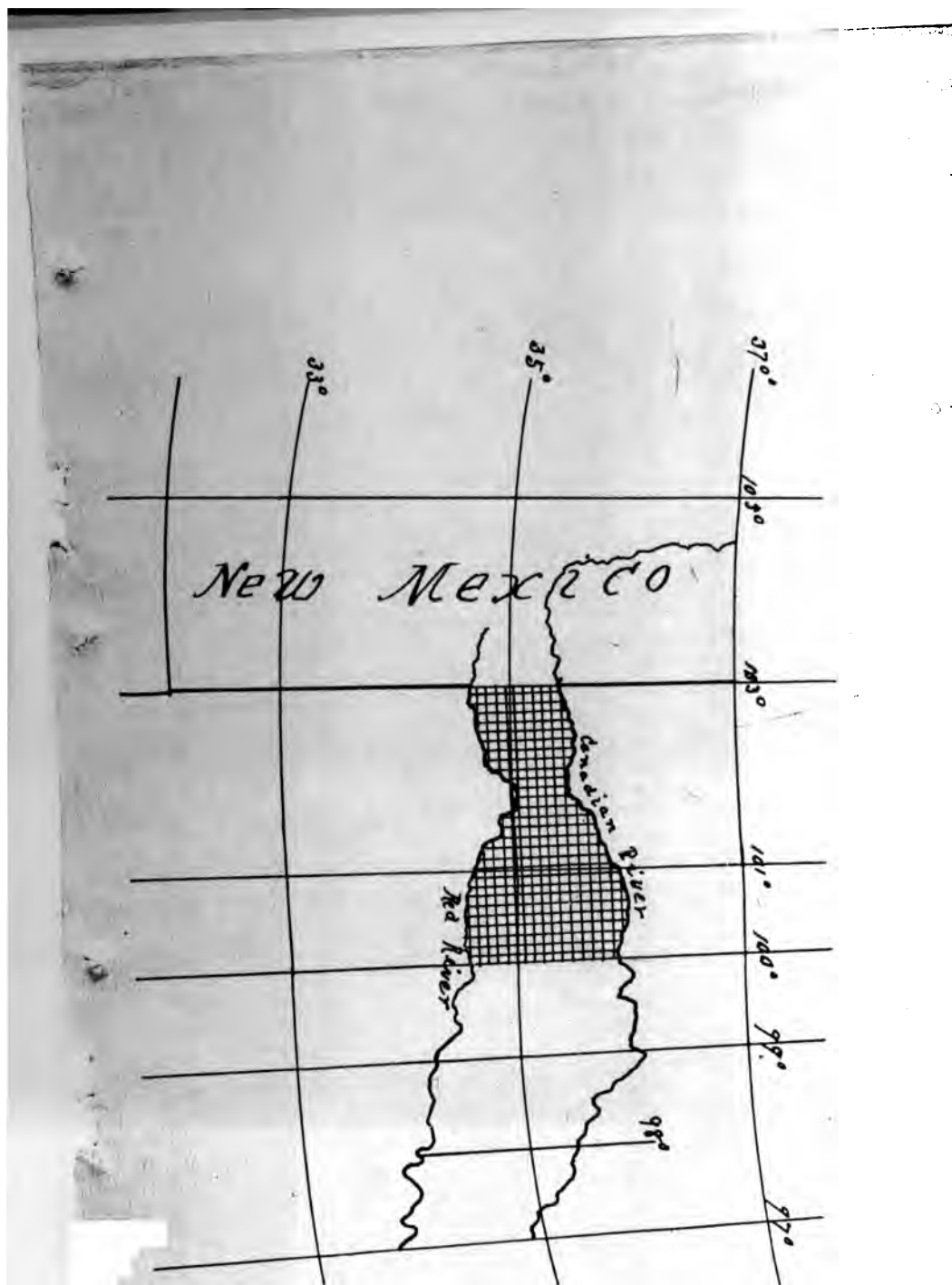


NO. 16.

No. 7. 1776.
*London. Under act of Parliament,
Copied from Von Stocklin's
St. Petersburg. 1774.*















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